EXECUTIVE CHAMBERS
KE KE‘ENA O KE KIA‘ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA‘ĀINA

Testimony of **James Koshiba**
Governor’s Coordinator on Homelessness
Before the
House Committee on Judiciary & Hawaiian Affairs
March 1, 2023
2:00pm., Via Video Conference
Conference Room 325
In consideration of
House Bill No. 1154 HD1
RELATING TO GUARDIANSHIP

Aloha Chair Tarnas, Vice Chair Takayama, and Committee Members,

I offer brief comments that I hope will help to clarify the intent of this measure.

The current language of this bill leaves open the possibility that merely entering a hospital or emergency shelter can subject a person to emergency guardianship, even in cases where that individual is fully capable of making decisions for themselves and where there is no risk of harm to that individual’s health, safety, or welfare, as the current legal standard requires.

To be clear, any shelter or hospital staff could petition a court for guardianship against the will of an individual, even if that individual is perfectly capable of decision-making and poses to risk to themself. I do not believe that was the intent of this bill.

For clarity, I recommend amending the bill’s language in Section 1.(a) as follows:

> “If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, **including in cases** ~~**or**~~ where the respondent resides in a psychiatric facility, hospital, or homeless shelter, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian…”

Mahalo,

James Koshiba
Governor’s Coordinator on Homelessness

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 1154, H.D. 1, RELATING TO GUARDIANSHIP.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, March 1, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Erin K. S. Torres, Deputy Attorney General, or
Julio C. Herrera, Supervising Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purposes of this bill are to (1) allow the appointment of emergency guardians for respondents who reside in psychiatric facilities, hospitals, and homeless shelters; (2) extend the appointment period for an emergency guardian from ninety to one hundred twenty days; (3) allow guardians to consent to care, treatment, or service over the objection of their wards; and (4) require the assessment of certain patients who are subject to emergency examination or emergency hospitalization pursuant to section 334-59, Hawaii Revised Statutes (HRS), to determine whether a surrogate or a guardian is needed.

Sections 1 and 2 of this bill limit the liberty of individuals to make decisions regarding their self-care, which could subject the bill to constitutional challenge. The Supreme Court of the United States has held that:

> [p]rocedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment . . . [D]ue process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including

> the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 332-35 (1976).

The amendment on page 1, lines 6-8, allows the appointment of an emergency guardian for an individual who would not otherwise be subject to substantial harm, based solely on the individual's residency in a psychiatric facility, hospital, or homeless shelter. Applying the three factors required under the Due Process Clause reveals a constitutional problem. First, the private interest at stake for a respondent is the fundamental right to liberty and self-determination. Second, the risk of erroneous deprivation is high because the emergency guardianship process allows for an appointment without compliance with the normal procedures for a guardianship. An emergency guardian can be appointed without a hearing and without prior notice to the respondent. See section 560:5-312(b), HRS. Third, the State may have difficulty justifying an interest in protecting an individual who (1) is not an "incapacitated person" as required for an appointment of a guardian under section 560:5-311(a)(1)(A), HRS, and (2) would not be subject to substantial harm if the court applies the the normal criteria and procedures for appointing a guardian. To avoid this constitutional problem, we recommend that this amendment be deleted.

However, if the Committee's intent is to clarify that an emergency guardian may be appointed for an individual residing in one of these identified placements, then page 1, lines 6-8, should be amended to read: "<u>including when the respondent resides in a psychiatric facility, hospital, or homeless shelter,</u>".

The amendment on page 3, lines 5-7, expands the power of a guardian to include the ability to consent to medical or other care, treatment, or service *over the objection of the ward*. Involuntary hospitalizations and the involuntary administration of medications are of particular constitutional concern because they infringe on the individual's right to liberty. The courts have established due process requirements for both involuntary hospitalizations and involuntary administration of medications, and chapter 334, HRS, sets forth the procedures that conform to these requirements.

Regarding involuntary hospitalizations, the Ninth Circuit Court of Appeals has held that, "it is unconstitutional to commit one who does not pose an imminent danger"

to self or others. *Suzuki v. Yuen*, 617 F.2d 173, 178 (9th Cir. 1980). Clear standards for involuntary hospitalizations that comply with the requirement for "imminent danger" are codified in section 334-60.2, HRS, and the amendment on page 3, lines 5-7, circumvents this section.

Regarding the involuntary administration of medications, the Supreme Court of the State of Hawai'i has held that three findings must be made before an individual may be involuntarily medicated:

> (1) that the [individual] actually poses a danger of physical harm to himself or herself or others; (2) that treatment with antipsychotic medication is medically appropriate, that is, in the [individual]'s medical interest; and (3) that, considering less intrusive alternatives, the treatment is essential to forestall the danger posed by the [individual].

State v. Kotis, 91 Hawai'i 319, 334, 984 P.2d 78, 93 (1999). Clear standards for assisted community treatment and for the administration of treatment over the patient's objection that comply with *Kotis* are codified in sections 334-121 and 334-161, HRS, and the amendment on page 3, lines 5-7, circumvents these sections.

In addition, the guardianship statute expressly states that, "[a] guardian shall not initiate the commitment of a ward to a mental health-care institution except in accordance with the State's procedure for involuntary civil commitment." Section 560:5-316(d), HRS. Therefore, the guardianship statute does not supersede the involuntary hospitalization statute. By analogy, the guardianship statute should not supersede the statutes for assisted community treatment and the administration of treatment over the patient's objection. For all the above reasons, the amendment on page 3, lines 5-7, ("including medical or other care, treatment, or service, over the objection of the ward") should be deleted.

However, if the Committee's intent is to clarify that guardians may act in accordance with court orders that have been issued for involuntary hospitalization, assisted community treatment, and/or the administration of treatment over the patient's objection, then page 3, lines 5-7, should be amended to read: "<u>including consent to medical or other care, treatment, or service that has been ordered pursuant to chapter 334;</u>".

The Department requests that the Committee make the recommended amendments to address the identified constitutional concerns. If these constitutional concerns are not addressed, the Department must respectfully oppose this bill.

Thank you for the opportunity to present our comments.

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
Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1154, H.D. 1, Relating to Guardianship.

Purpose: Part I: Amends the uniform probate code to allow courts to appoint emergency guardians for respondents who reside in psychiatric facilities, hospitals, and homeless shelters. Extends the appointment period. Clarifies that guardians may consent to care, treatment, or service over the objection of wards. Sunsets 1/1/2028. Part II: Requires certain patients subject to emergency hospitalization to be assessed to determine whether a surrogate or guardian is needed to make appropriate health care decisions for the patient. Effective 6/30/3000. (HD1)

Judiciary's Position:

The Judiciary takes no position with respect to House Bill No. 1154, H.D. 1, but respectfully offers the following comments:

Part I, Section 1 of the bill amends Hawai‘i Revised Statutes (HRS) § 560: 5-312 as follows:

> (a) If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, or where the respondent resides in a psychiatric facility, hospital, or homeless shelter, and that no other person

> appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed [~~ninety~~] one hundred twenty days and who may exercise only the powers specified in the order.

Because the new clause -- "or where the respondent resides in a psychiatric facility, hospital, or homeless shelter," -- is in the disjunctive, it authorizes the court to appoint an emergency guardian based *solely* on where a person resides. That is, it appears that a court would be authorized to appoint an emergency guardian simply because the person resides in a homeless shelter (or in a hospital or psychiatric facility), without more. For all other people, including, for example, a homeless person living on the streets and not in a shelter, before appointing an emergency guardian, the court would have to find that following the regular guardianship process would "likely result in substantial harm to the [person's] health safety or welfare" before an emergency guardianship could be ordered. HRS § 560:5-312.

In other words, the amendment has one group of respondents facing "substantial harm to the respondent's health, safety, or welfare" and a different group who simply "resides in a psychiatric facility, hospital, or homeless shelter."

If the intent of the bill is simply to clarify that emergency guardians can be appointed for people who reside in homeless shelters, psychiatric facilities or hospitals, we note that the current guardianship statute does not preclude emergency guardianships for those individuals since the court already has subject matter jurisdiction over all "individuals domiciled or present in the State[.]" HRS 560:5-106.

We therefore suggest that the Committee consider striking the language on page 1, lines 6-8 ("or where the respondent resides in a psychiatric facility, hospital, or homeless shelter,").

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

The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, March 1, 2023, 2:00 p.m.
Conference Room 325 & Via Videoconference

by:
Roland Lee
Director
Office of the Public Guardian

Bill No. and Title: House Bill No. 1154, H.D. 1, Relating to Guardianship

Purpose: Part I: Amends the uniform probate code to allow courts to appoint emergency guardians for respondents who reside in psychiatric facilities, hospitals, and homeless shelters. Extends the appointment period. Clarifies that guardians may consent to care, treatment, or service over the objection of wards. Sunsets 1/1/2028. Part II: Requires certain patients subject to emergency hospitalization to be assessed to determine whether a surrogate or guardian is needed to make appropriate health care decisions for the patient. Effective 6/30/3000. (HD1)

Judiciary's Position:

The Office of the Public Guardian (OPG) respectfully opposes this measure. Section 1 of this measure amends §560:5-312, Hawai'i Revised Statutes (HRS) to:

(1) Authorize the appointment of an emergency guardian solely because a person resides in a psychiatric facility, hospital, or homeless shelter; and
(2) Extend the allowable period of emergency guardianships from 90 days to 120 days.

We oppose these amendments for several reasons. First, the purpose of guardianships under Chapter 560, Article V, Part 3, HRS, is to appoint someone to act on behalf of an incapacitated person who is unable to make or communicate decisions pertaining to their

physical health, safety, or self-care. Because guardianships limit the ability of persons to make decisions for their own care, the procedures for appointing a guardian include due process protections, such as prior notice and a hearing before the appointment is made. Current law authorizes courts to bypass these procedural protections and appoint emergency guardians, but only when necessary to avert substantial harm to a person's health, safety, or welfare. By allowing emergency guardians to be appointed solely on the basis of a person's residence at a psychiatric facility, hospital, or homeless shelter, and absent a risk of substantial harm justifying the bypassing of procedural safeguards in the normal guardianship process, this measure drastically deviates from the current practice of reserving emergency guardianships for medical emergencies that are imminent in nature for persons who lack the capacity to make informed decisions regarding their own treatment.

This shift in how emergency guardianships are applied raises practical concerns. For example, in past emergency guardianship appointments, OPG has been ordered to consent to treatment for cases involving a person suffering from a stroke or facing end-of-life issues. In each of these cases, a clear and present medical emergency provided the basis for the emergency guardianship. However, under the provisions of this measure, if an emergency guardian is appointed absent a medical emergency, there is a higher risk of the guardian consenting to a treatment that the ward disagrees with, which would likely result in non-compliance with the procedure and render the guardianship ineffective. This would also increase the frequency of treatments carried out against the ward's objections.

Further, this provision of the measure seems unnecessary if the intent is merely to clarify that residents of psychiatric facilities, hospitals, or homeless shelters are eligible for emergency guardianships, given that the current law does not bar the appointment of emergency guardianships for residents of these facilities so long as the statutory criteria are met.

Second, because of the impacts on a person's ability to make decisions on self-care, the duration of emergency guardianships should be limited to time periods that are absolutely necessary, and proposals to expand the allowable period should be carefully considered. We note that currently, if a ward does not regain decisional capacity within the 90-day period of an emergency guardianship, a petition may be filed under the normal appointment process for a guardianship that continues until terminated. Commonly, unlimited guardianship petitions are filed following an emergency guardianship appointment where the court could calendar the unlimited guardianship hearing within the 90-day period. Therefore, the amendment in this measure increasing the 90-day duration for emergency guardianships to 120 days appears to be unnecessary.

For the foregoing reasons, we recommend that the amendments described in this testimony be deleted from the bill.

Thank you for the opportunity to submit testimony on this measure.

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

KENNETH S. FINK, M.D., M.G.A, M.P.H
DIRECTOR OF HEALTH
KA LUNA HO'OKELE

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
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Testimony COMMENTING on H.B. 1154, H.D. 1
RELATING TO GUARDIANSHIP

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

Fiscal Implications: Undetermined.

Department Position: The Department of Health ("Department") appreciates the intent of this measure, offers comments, and a proposed amendment.

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

The purpose of this measure is to amend Hawaii Revised Statutes §560:5-312, and Hawaii Revised Statutes §560:5-315.

Regarding Section 1, page 1, lines 4-8, the Department is concerned that this part, as written, is potentially confusing. As drafted, this section could be interpreted that any respondent residing in a psychiatric facility, hospital or homeless shelter could be appointed an emergency guardian regardless of whether compliance with the procedures will result in substantial harm to the respondent's health, safety or welfare. We recommend replacing "or" with "including in cases" to avoid misinterpretation.

We believe the intended outcome of this bill can only be reached effectively when we include continuous education and training as drafted in H.B. 885, H.D. 1. This is especially

needed with the current high turnover rates in the workforce. We are committed to arranging training sessions for clinicians and stakeholders to increase understanding about existing law, available options, and case scenarios with which these laws are commonly applied.

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

Offered Amendments: We respectfully submit the following amendment for consideration.

Page 1, lines 6-8: "… to the respondent's health, safety, or welfare, <u>including in cases</u> where the respondent resides in a psychiatric facility, hospital, or homeless shelter,…"

Thank you for the opportunity to testify on this measure.

HB-1154-HD-1
Submitted on: 2/28/2023 9:28:24 AM
Testimony for JHA on 3/1/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elizabeth Kent	Commission to Promote Uniform Laws	Oppose	Remotely Via Zoom

Comments:

Aloha,

Thank you for the opportunity to submit testimony in strong opposition to Part I of HB 1154, HD 1. Although I am very sympathetic to the problem I believe the bill is trying to address, taking away people's due process rights is not the way to do it.

The language of this bill would amend the uniform law to allow appointment of an emergency guardian **whenever** a person "resides (an undefined term in the context of this statute) in a psychiatric facility, hospital or homeless shelter. The language would not require a finding that compliance with the procedures would result in substantial harm to the respondent's health, safety, or welfare. Our due process rights are paramount – they should not be changed just by virtue of the place a person is residing. In fact, deprivation of due process rights by virtue of residing in a psychiatric facility, hospital, or homeless shelter would likely be a deterrent to seeking help, which would be an unintended and negative consequence of amending the current statute.

The proposed amended language would also extend the authority of the emergency guardian from ninety to one hundred twenty days, or by 33%. I am not sure why such an extension is warranted.

Finally, regarding allowing a guardian to consent to medical treatment that the person objects to receiving, there are many good reasons why a person may decide not to seek medical treatment. Decision-making about our own health needs is a critical part of our self-determination.

Thank you for your consideration of my concerns about HB 1154, HD 1. Please do not pass it in its current form.

Elizabeth Kent

HB-1154-HD-1
Submitted on: 2/27/2023 7:02:27 PM
Testimony for JHA on 3/1/2023 2:00:00 PM

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

Comments:

We continue to be puzzled by the drafting of page one lines 6-8. Numerous testifiers pointed out at the hearing before the prior Committee that this language would authorize the appointment of a guardian simply because the person resided in a homeless shelter or was in a hospital. We cannot believe that that is the intent of the legislature. As we understood the intent, it was to clear up any ambiguity as to whether the current law would otherwise cover such individuals. As the Judiciary pointed out the answer is that of course the current law encompasses all individuals. So, we would suggest either deleting that language or clarifying the intent to state that it could include such individuals if they otherwise met the criteria.

Regarding the provision for an assessment of the need for a surrogate or a guardian, we have no objection so long as it does not result in the individual being held or detained beyond the period currently allowed by law. Following through on those assessments could obviously take some time and if the individual otherwise did not meet the criteria for any "longer hold" they would need to be discharged pending any follow-up.

The testimony from the Attorney General at the prior hearing seemed to state that a guardian cannot unilaterally consent to the involuntary administration of medication of the ward. Rather, they must follow the procedure outlined in the Hawaii Revised Statutes, applying case law that has been developed in accordance with constitutional standards. We would defer our legal opinion to that of the Attorney General.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI PALI MOMI STRAUB WILCOX

Wednesday, March 1, 2023 at 2:00 PM
Via Video Conference; Conference Room 325

House Committee on Judiciary

To: Representative David Tarnas, Chair
Representative Gregg Takayama, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: HB 1154, HD1 – Comments With Suggested Amendment Relating to Health

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My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawaiʻi Pacific Health. Hawaiʻi Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapiʻolani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawaiʻi.

I am writing to provide COMMENTS on HB 1154, Part II which would require patients who are seen in a hospital's emergency department or who are hospitalized on an emergency basis, and who are diagnosed with a mental illness or severe substance abuse disorder, to be assess by a psychiatrist or advanced practice registered nurse having prescriptive authority. The psychiatrist or advanced practice registered nurse would then determine whether a surrogate or guardian is needed to make appropriate health care decisions for the patient.

We appreciate the intent of the bill and recognize the difficulties in assuring that patients suffering from a mental illness or suffering from a substance abuse disorder receive care which is both necessary and appropriate based on their disorder. Many such patients are seen in the emergency departments of the HPH hospitals. It is well known that a significant underlying challenge to this issue is psychiatric resource capacity resulting in many patients are held in the emergency department for long periods of time—sometimes hours or even days—awaiting psychiatric care. Unfortunately, not all emergency departments have access to a psychiatrist or an advanced practice registered nurse having prescriptive authority. Thus, within an emergency room or acute care setting, limiting the assessment of whether an individual is a harm to self or others to be performed to two professions – psychiatrists and advanced practice nurses -- reduces the options available to both the hospital staff as well as the patient.

Additionally, locating an individual willing to accept the role of surrogate or guardian is difficult. The language in the bill attempts to replace the patient's autonomy with a third party surrogate who has not been legally appointed by a court or appointed by the patient while the patient was of sound mind. Traditionally in emergency care, the provider determines whether the patient has the capacity to make decision at the time they are seen in the emergency department. Emergency room physicians are qualified and trained to evaluate for decisional capacity, and often do for a variety of medical reasons (e.g., delirium, cancer metastases to the brain, Traumatic Brain Injuries, etc.). If the patient does not have capacity, the provider treats the patient based on the usual standard of care under the theory of implied consent.

The requirement of assessing the patient to determine whether the patient lacks decisional capacity is not normally undertaken in the emergency department of an acute care hospital. These types of assessments are standard for inpatient psychiatric units/facilities. Hospitals may admit someone who needs psychiatric hospitalization for medical reasons, but do not provide psychiatric care. Should an emergency room physician identify an emergency medical condition that requires psychiatric treatment, arrangements are made to transfer the patient to one. If a patient is admitted for medical reasons, the patient is kept until the medical hospitalization is no longer required and then they are transferred to a psychiatric facility.

We therefore seek clarification on some practical questions & considerations not addressed in this bill:

- Is the individual required to be held until a surrogate is appointed?
- Under what time constraint is the surrogate required to be appointed and by whom?
- What if the surrogate does not agree to a Standard of Care, and declines normal treatment?
- What if the individual has no identifiable friends or family?
- What if the individual does not want a particular family member as a surrogate?

We are concerned that this bill may be redundant with other laws addressing capacity and psychiatric concerns that already exist. However, HPH is continuing to look into this complex issue and may have additional input. At this time, in order to expand the types of health care professionals who are able to assess the patient suffering from a mental illness or severe substance abuse disorder who is seen in the emergency department, we suggest that the bill be amended to allow for other qualified staff members appropriate in emergency room staffing models to also participate in this evaluation for the best interests of patient care and safety. Suggested language is provided below.

SUGGESTED AMENDMENTS to page 5 lines 2-12:

A patient who is examined in an emergency department or hospitalized on an emergency basis pursuant to this subsection, and who is determined to be imminently dangerous to

self or others by an emergency room physician, or psychologist or, diagnosed with a mental illness or severe substance use disorder pursuant to subsection (b), and found to be lacking decisional capacity by a psychiatrist, an emergency room physician, psychologist or advanced practice registered nurse having prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization, shall be assessed to determine whether a surrogate under section 327E-5 or a guardian under article V of chapter 560 is needed to make appropriate health care decisions for the patient.

Thank you for the opportunity to testify.

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 1154 HD1: Relating to Guardianship

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 1154 HD1, which amends the Uniform Probate Code to allow courts to appoint emergency guardians for respondents who reside in psychiatric facilities, hospitals, and homeless shelters, extends the appointment period, clarifies that guardians may consent to care, treatment, or service over the objection of wards, and requires certain patients subject to emergency hospitalization to be assessed to determine whether a surrogate or guardian is needed to make appropriate health care decisions for the patient.

With regard to Part I of the bill, as one of the largest acute care facilities in the state that regularly administers to patients who would be effected by this proposed measure, we note the impact this could have on extending the length of stay in our hospital. We appreciate the Committee's attention to the underlying challenge with administering to this patient population and we are committed to continuing to work with the courts and other stakeholders to address the needs and concerns that exist in these circumstances.

Queen's appreciate the intent of Part II of the measure to address challenges facing patients with compromised decisional ability in an emergent acute care setting; however, under existing statute and practice, if a person with mental illness or a substance use disorder lacks decisional capacity, physicians can determine the appropriate level of care or treatment for them. This treatment can include psychiatric admission for a 48-hour period, and/or treatment with medication if the person is diagnosed as dangerous to themselves or others.

We support the use of advanced mental health care directives (HRS 327G) for people with mental illness or substance use disorders to designate an agent to make their healthcare decisions when they lack capacity. The advanced mental health directives represent the patient's wishes before they are in an acute care crisis.

An equal, or arguably more urgent, need in our state is to increase community resources to provide services for those who are in crisis but may not rise to the level of requiring inpatient care. Queen's continues to work with the Department of Health on the statewide Mental Health Emergency Worker (MHEW) program to strengthen the continuum of care for patients by effectively screening individuals in crisis and triaging them to receiving sites and services as needed.

Let us make sure that in our approach to caring for the neediest in our community that we are taking a holistic view of the problem rather than a proximate one. We welcome the opportunity to continue to work with the Committee and stakeholders to further address the issues highlighted in this measure.

Thank you for allowing us to provide testimony.

Committees:	House Committee on Judiciary and Hawaiian Affairs
Hearing Date/Time:	Wednesday, March 1, 2023, 2:00 P.M.
Place:	Via videoconference Conference Room 325 State Capitol 415 South Beretania Street Honolulu, HI 96813
Re:	*Testimony of the ACLU of Hawai'i in Opposition of S.B. 1154 relating to Guardianship*

Dear Chair Tarnas, Vice Chair Takayama and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i) writes in opposition of **HB 1154 HD 1** which amends the uniform probate code to allow court-appointed emergency guardians for respondents who merely reside in mental-health facilities, hospitals, and homeless shelters. The ACLU has a long history of advocating for everyone's rights to live independent, self-directed lives as active members of their communities. Our concern about guardianship is part of that commitment: ensuring that people retain their civil rights and liberties and a belief that people living with behavioral health conditions are protected through the exercise—rather than the removal—of these rights. Our main concern with this bill in its current form is that people stand to lose their personal autonomy — especially concerning their own healthcare — simply because they reside in shelters or other institutional settings.

The ACLU of Hawai'i respectfully opposes HB 1154 HD 1 for the following reasons:

1) Court-appointed guardianship can violate civil rights and civil liberties and denies a person's right to choose and have autonomy over personal healthcare decisions;
2) Studies reveal that adequately-resourced intensive voluntary outpatient treatment can be more effective than court-ordered treatment

As pointed out by previous testimony on this bill, HB 1154 HD 1 severely limits the ability of individuals to makes decisions for themselves. Under the due process clause of the Fifth and Fourteenth Amendments to the federal Constitution, individuals have built in constitutional protections against both federal and state governments from depriving any person of "life, liberty,

or property, without due process of law.[1]" These include several rights and among them is the right for bodily integrity and autonomy.[2]

Furthermore, a RAND study reveals the effectiveness of outpatient treatment and its alternatives. The study, among other things, highlights the clear and convincing evidence that intensive community-based voluntary mental health treatment is more effective than court orders .[3]

Too often people experiencing mental health conditions, regardless of their seriousness or management, are stripped of virtually all of their civil rights and liberties through guardianships. We need robust systems for people living with mental health conditions to avoid or exit unnecessary and ineffective guardianships and direct their own lives. Most of all, we must recognize that mental health conditions alone should not be an excuse to deprive someone of their basic civil liberties.

For the above reasons, the ACLU of Hawai'i requests that the Committee oppose this measure. Thank you for the opportunity to testify.

Sincerely,

Scott Greenwood

Scott Greenwood
Executive Director
ACLU of Hawai'i
sgreenwood@acluhawaii.org

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

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[1] U.S. CONST. amends V, XIV

[2] *See* Cruzan by Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261, 278–79 (O'Connor, J. concurring) (discussing well-established, traditional rights to bodily integrity)

[3] M. Susan Ridgely, et al., The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States, RAND Health and RAND Institute for Civil Justice, 2001 (https://www.rand.org/pubs/monograph_reports/MR1340.html).

HB-1154-HD-1
Submitted on: 2/27/2023 5:14:02 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:

The Courts are to Crooked!!!

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

From: Lindsay Ann Pacheco

Re: HB1154, HD1

Date: Wednesday; March 1, 2023
2:00pm Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama, and Committee Members:

As a member of the O'ahu Lived Experience Council (OLEC), I share this testimony with you strictly as an individual who comes with nearly 9 years of homelessness lived experience. I have only been housed for nearly three years now, and let me tell you the journey to get to where I am currently at today was not an easy journey, but one that is my own and strictly my own.

I am in strong **opposition** of HB1154, HD1. The current language in section 1 proposes that anyone may petition the court to have a guardian appointed to make overall decisions for anyone residing in a psychiatric facility, hospital, or homeless shelter even when there is no risk of substantial harm to the respondent's health, safety, or welfare as currently required by law.

In all honesty and straightforwardness, after having gone through several different homeless shelters in order to get the housing that I am currently residing in, I've learned to not trust shelter staff at all, and allowing shelters and their staff to petition the courts to appoint a guardian for anyone who is a client in their shelter is not right. All I would have to do is get on a staff member's bad side and it would be extremely easy for them to make someone like me look really bad on paper as they petition the court for guardianship over me even if I am fully capable of making conscious decisions for myself, no matter what state or frame of mind I may be in.

As a result of my recent personal experiences in shelters and dealing with a lot of untrustworthy shelter staff members, I highly recommend removing this language from HB1154, HD1. Allowing psychiatric facilities, hospitals, or homeless shelters staff members to have this power over people – even in cases where people are at NO RISK of harming the health and safety of themselves or others -- is unfair, inhumane, and definitely a violation of civil rights. Please do NOT pass this bill with its current language.

Thank you for allowing me this opportunity to provide testimony.

Lindsay Ann Pacheco

TO: Rep. David A. Tarnas, Chair
Rep Gregg Takayama, Vice Chair
Members, House Committee on Judiciary & Hawaiian Affairs

RE: HB1154, HD1 RELATING TO GUARDIANSHIP

DATE: Wednesday, March 1, 2023
2:00pm Conference Room 325

Aloha Chair Tarnas, Vice Chair Takayama, and Judiciary & Hawaiian Affairs Committee Members,

I am Esther Kim and I am testifying in **strong opposition to HB1154, HD1**, relating to guardianship.

I received my Bachelor's of Social Work degree from the University of Hawaii at Manoa and am an active volunteer with Hui Aloha, a group of volunteers who build relationships with our houseless/homeless friends and seek to create community between the houseless and housed here on Oahu. Speaking from both of these experiences, HB1154 poses serious consequences and only exacerbates the homelessness issue.

Section 1 of this bill states that "If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, or where the respondent resides in a psychiatric facility, hospital, or homeless shelter," that the respondent may be appointed an emergency guardian for up to 120 days in which the guardian may exercise powers specified in the order. I have concerns specifically about the inclusion of homeless shelters for the following reasons:

- I'd like to emphasize the part of Section 1 that states, "If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, **or** where the respondent resides in a psychiatric facility, hospital, or **homeless shelter."** This would include individuals who are capable of making decisions for themselves and are not at risk of harming their health, safety, or welfare simply because they reside in a shelter. The language in this bill suggests that people who reside in homeless shelters are mentally ill; however, people in shelters and houseless people face inordinate challenges which affect their mental health and well-being, but does not necessarily classify them as mentally ill. Attaching mental illness to the houseless/homeless shelter population is dangerous and ignores the economic crisis of our state that pushes many into housing insecurity. If we want to address the mental well-

being of our houseless people in Hawaii, we can do so by investing in long-term truly affordable housing and wrap-around services.

- The language is unclear on what exact behavior would be considered “substantial harm to the respondent’s health, safety, or welfare.” This bill would give inordinate power to shelter staff and violates the rights of the shelter residents. Having volunteered with those who have resided in shelters, the ambiguity of “substantial harm” can lead to residents being wrongly petitioned to be assigned a guardian by shelter staff. Those who have previously resided in shelters have shared that they have experienced conflict with shelter staff which have led to eviction and removal from the shelter and its services. I fear that this bill will take away even more autonomy from the houseless and give power to staff who are not properly trained to assess whether someone is “substantial harm” to one’s health, safety, or welfare.
- This bill with its current language if passed will lead to an influx of unnecessary psychiatric evaluations and court orders and will overwhelm an already overwhelmed health care, legal, and social services system. This could lead to those who are truly mentally ill and at risk of harming themselves not receiving treatment in a timely manner or at all.

For these reasons, I strongly oppose HB1154.

Mahalo for the opportunity to provide testimony.

Esther Kim

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

HB-1154-HD-1
Submitted on: 3/1/2023 2:23:04 PM
Testimony for JHA on 3/1/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Oppose	Written Testimony Only

Comments:

oppose