

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
**KA 'OIHANA OLAKINO**  
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Honolulu, HI 96801-3378  
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**Testimony COMMENTING on H.B. 1154**  
**RELATING TO GUARDIANSHIP**

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

Hearing Date, Time and Room: Friday, February 3, 2023 at 9:30 a.m. in Room 329/VIDEO

1 **Fiscal Implications:** Undetermined.

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

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

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

8 Regarding Section 1, page 1, lines 5-7, the Department is concerned that this part, as  
9 written, is potentially confusing. We recommend replacing “or” with “including in cases” to  
10 avoid misinterpretation.

11 Additionally, regarding Section 1, page 1, line 11, the Department does not have any  
12 public health or evidence based practice to support that a change from 90 to 120 days is  
13 beneficial. We seek clarification from the Legislature to understand this proposed change. We  
14 are open to alternatives to increasing the number of days such as keeping the initial duration of

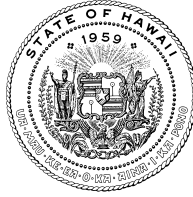
1 90 days but adding that there is an optional extra 30 day extension if deemed necessary, with  
2 no more than two consecutive extensions.

3 We believe the intended outcome of this bill can be reached effectively through  
4 continuous education and training. This is especially needed with the current high turnover  
5 rates in the workforce. We are committed to arranging training sessions for clinicians and  
6 stakeholders to increase understanding about existing law, available options, and case  
7 scenarios with which these laws are commonly applied.

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

9 Page 1, lines 5-7: "... to the respondent's health, safety, or welfare, including in cases  
10 where the respondent resides in a psychiatric facility, hospital, or homeless shelter,..."

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



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 Health & Homelessness**  
February 3, 2023  
9:30 a.m., Via Video Conference  
Conference Room 329

In consideration of  
**House Bill No. 1154**  
**RELATING TO GUARDIANSHIP**

Aloha Chair Belatti, Vice Chair Takenouchi, and Committee Members,

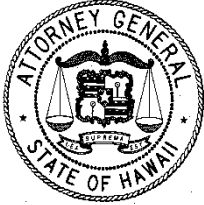
I offer brief comments that may help to clarify the intent of this measure.

The current language seems to leave open the possibility that merely being in a hospital or emergency shelter can enable appointment of an emergency guardian, even in cases where there is no risk of substantial harm to the respondent's health, safety, or welfare.

For clarity, I recommend amending language 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, **including in cases** ~~or~~ where the respondent resides in a psychiatric facility, hospital, or homeless shelter, and that no other person..."

Mahalo,

James Koshiba  
Governor's Coordinator on Homelessness



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1154, RELATING TO GUARDIANSHIP.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

**DATE:** Friday, February 3, 2023 **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Erin K. S. Torres, Deputy Attorney General

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Chair Belatti 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; and (3) allow guardians to consent to care, treatment, or service over the objection of wards.

This bill limits the liberty of individuals to make decisions regarding their self-care, which makes it subject 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, 96 S. Ct. 893, 901-03, 47 L. Ed. 2d 18 (1976).

The amendment on page 1, lines 5 through 7, allows the appointment of an emergency guardian for an individual who would not otherwise be subject to substantial harm, based solely on their 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), Hawaii Revised Statutes (HRS). Third, the State has little 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 complies with the normal procedures for appointing a guardian. To avoid this constitutional problem, we recommend that this amendment be deleted.

The amendment on page 3, lines 5 and 6, expands the power of a guardian to include the ability to consent to 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 medications, and chapter 334, HRS, sets forth 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. The amendment on page 3, lines 5 and 6, circumvents section 334-60.2, HRS.

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

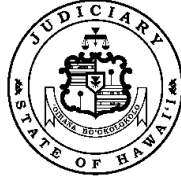
(1) that the [individual] actually poses a danger of physical harm to himself or herself or others; (2) that treatment with antipsychotic medication is medically appropriate, that is, in the [individual]'s medical interest; and (3) that, considering less intrusive alternatives, the treatment is essential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

*State v. Kotis*, 91 Haw. 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. The amendment on page 3, lines 5 and 6, circumvents sections 334-121 and 334-161, HRS.

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, we recommend that the amendment on page 3, lines 5 and 6, be deleted.

The Department respectfully asks the Committee to make the recommended amendments prior to passing 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 Health & Homelessness**

Representative Della Au Belatti, Chair

Representative Jenna Takenouchi, Vice Chair

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

State Capitol, Conference Room 329 & Videoconference

by

Matthew J. Viola

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1154, Relating to Guardianship.

**Purpose:** 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.

**Judiciary's Position:**

The Judiciary takes no position with respect to House Bill 1154, but respectfully offers the following comments:

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



House Bill No. 1154, Relating to Guardianship  
House Committee on Health & Homelessness  
Friday, February 3, 2023 at 9:30 a.m.  
Page 2

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.” 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.

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





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

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

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

**RE:** HB1154 – RELATING TO GUARDIANSHIP

**HEARING:** February 3, 2023 at 9:30 AM

**POSITION:** IHS strongly supports the passing of HB 1154

Changes proposed in this statute have the potential to remedy the denial of a homeless individual from being appointed a public guardian when they are found in a hospital, psychiatric facility, or a homeless shelter as some have interpreted an individual in hospital or shelter is considered in a safe place and not in danger of self or others.

The extension of emergency guardianship from 90 days is important as it is a very short period of time to see medications take full effect, particularly if the individual is dually diagnosed with methamphetamine abuse of a long duration. The period of time required to heal an untreated chronically mentally ill brain could take more than six to 12 months depending on trauma suffered and other comorbidities affecting the individual. Someone chronically homeless persons with a heavy substance use disorder take much longer to recover than someone who has suffered mental illness alone. Extending emergency guardianship could allow consistent initial treatment over a longer period of time so that the time it takes to petition for and be granted guardianship would not result in the patient going without medication treatment for any length of time.

**The language inserted in HB 1154 describing the guardians ability to authorize treatment over objection is explicit in the event guardians may feel hesitant to use ACT orders to treat over objection, fearing liability due to the nature of the treatment they are approving.**

**HB-1154**

Submitted on: 2/1/2023 12:13:18 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Louis Erteschik	Hawaii Disability Rights Center	Comments	Remotely Via Zoom

Comments:

We thought current law covered this but to the extent there is any ambiguity we think it is reasonable to provide clarification.



## THE QUEEN'S HEALTH SYSTEM

To: The Honorable Della Au Belatti, Chair  
The Honorable Jenna Takenouchi, Vice Chair  
Members, House Committee on Health & Homelessness

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

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

Date: February 3, 2023

Re: Comments on HB1154: 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 HB1154, 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, and clarifies that guardians may consent to care, treatment, or service over the objection of wards.

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.

Thank you for allowing us to provide testimony.

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

**HB-1154**

Submitted on: 2/2/2023 7:47:02 AM

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

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

Comments:

Aloha,

Thank you for the opportunity to submit testimony on this bill. I oppose the proposed language even though I am very sympathetic to the problem this attempts to address.

The bill would add language to the uniform law that would allow appointment of an emergency guardian whenever a person is in a psychiatric facility, hospital or homeless shelter. I don't think that the protections in the law should be changed just by virtue of the place a person is residing. In fact, I think it would become a deterrent to seeking help.

The proposed amended language would also extend the authority of the emergency guardian from ninety to one hundred twenty days, or by 33% and expressly allow the emergency guardian to consent to medical treatment that the person objects to receiving. As I understand this, all of this would be done before there is an evaluation of the person's decision-making capacity.

Decision-making about our own health needs is a critical part of our self-determination. If we have the capacity to make our own decisions, we should have the right to make "bad" decisions. Until a judge has had an opportunity to make that determination, the presumption should be that people have the capacity to make their own decisions. Perhaps, working to find a way for expedited hearings in emergency cases would meet the interests sought to be resolved here.

Thank you for your consideration of my concerns about HB 1154.

Elizabeth Kent

**HB-1154**

Submitted on: 2/2/2023 7:58:19 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lindsay Ann Pacheco	O'ahu Lived Experience Council	Oppose	Written Testimony Only

Comments:

Aloha Chair Belatti, Vice Chair Takenouchi, and Committee Members,

As a member of the O'ahu Lived Experience Council (OLEC), I strongly oppose HB1154. Please correct me if I am wrong, but from what I understand this Bill is stating that homeless shelter staff will be authorized to make decisions on behalf of individuals that THEY deem unable to make decisions for themselves. As someone who has been through the shelter system I honestly foresee this authority as being taken advantage of in huge ways. Also if someone is unable to make decisions for themselves, they do not belong in a homeless shelter to begin with. They belong in a home or facility properly staffed and equipped to help such types of individuals. From my own personal experiences of being a client in several different shelters here in Honolulu, there are many shelter staff who are only there for the easy paycheck. I have witnessed, many times, shelter staff taking advantage of shelter residents / clients simply because they are in a position of power. If homeless shelter staff are given the authority to make decisions for someone else's well being, including financial decisions, I can personally foresee a great number of innocent people being taken advantage of and robbed blind without even realizing it. Also, HB1154 mentions the authority to establish a place of residence for individuals, even if that place of residence is out of state. Now you're telling homeless shelter staff they can send anyone against their own will to live on the mainland, in another state. That is not fair especially for Native Hawaiians who wish to remain in Hawaii. Should the authority be removed from shelter staff to make these types of decisions on behalf of folks who may not be able to decide for themselves, then I could support HB1154. Otherwise, at this time, I strongly oppose HB1154.

Thank you,

Lindsay Ann Pacheco

O'ahu Lived Experience Council - Co-Founder

## TESTIMONY OF ELLEN GODBEY CARSON ON HB 1154

### **I write in strong support of HB 1154.**

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

We only need to walk down our urban streets to see that we are failing to protect persons with severe mental illness. They live on our streets, rotating between the ER, jail, shelters and the streets again in a never-ending downward cycle. Over 100 of our homeless residents die on our streets each year, at an average age of only 54. In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street without effective treatment. Many of them are so mentally ill they can lack decision-making capability for life-saving medication and self-preservation.

I support HB 1154 because it will make our Emergency Guardianship statute more effective for those with very serious mental illness and/or severe substance abuse, who lack decisional authority. Currently, standard guardianship petitions for persons in hospitals, psychiatric facilities and shelters, can take 6 – 10 months, even where the person is severely mentally ill, has no decisional capacity to make decisions on their own, and has no one with legal authority to act on their behalf. For persons experiencing active psychosis, hallucinations, mental trauma and related mental health conditions, this imposes needless suffering and risk of deterioration.

Imagine if you or a loved one had a severe illness, were mentally incapacitated to make your own decision, and had to wait 6 – 10 months before someone could be appointed to act on your behalf? Wouldn't you want an emergency guardianship so someone could promptly authorize treatment and make other decisions to help protect you?

We have miracles of modern medicine that can treat even the most severe mental illnesses. But treatment requires either actual consent or legal procedures for ordering appropriate treatment. We owe it to these individuals to provide them life-saving treatment to stabilize them and help restore their lucidity when they lack their own decision-making authority. Emergency Guardianship is one way to help make that happen.

HB 1154 will help us better address these needs in the following ways:

- Expands use of emergency guardianships under HRS 560:5-312 to allow appointment of an emergency guardian who can act for the respondent, where the respondent "resides in a psychiatric facility, hospital or homeless shelter," and no other person appears to have authority and willingness to act in the circumstance.

- Expands the maximum length of an emergency guardianship to 120 days instead of the current 90 days. (Otherwise, emergency guardianships expire before a standard guardianship order can be obtained). Alternatively, if the committee prefers, allow extension of the existing 90 day order for another 90 days if the need for a guardian continues to exist.
- Makes explicit the guardian's right to consent to medication over the objection of the individual. We hear repeatedly that medical providers do not know if they can provide treatment requested by a guardian if the subject/ward does not agree to the treatment. Adding this to the statute will make clear that medication can be provided by the authority of the guardian even if the subject/ward does not agree.

If the committee has any substantial concern with the amended language waiving a showing of "substantial harm" for persons "residing in a psychiatric facility, hospital or homeless shelter," then we urge the committee to approve the bill with that language but add additional terms related to such persons, such as adding a requirement that the petition be accompanied by a sworn clinical opinion that the person appears to need treatment for a substantial medical or psychiatric condition but appears to lack decisional capacity to make an informed consent regarding recommended treatment.

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

Ellen Godbey Carson  
Honolulu, Hawaii

**HB-1154**

Submitted on: 2/2/2023 7:56:00 PM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mary Pat Waterhouse	Individual	Support	Written Testimony Only

Comments:

This bill helps those with serious mental illness get the help they need.