

*The Judiciary, State of Hawai‘i*

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

**Senate Committee on Judiciary**

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

**Senate Committee on Ways and Means**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Thursday, April 6, 2023 at 10:46 a.m.  
State Capitol, Conference Room 211 & Videoconference

by

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

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 1156, H.D.2, S.D.1, Relating to Health.

**Purpose:** Authorizes psychiatrists, advanced practice registered nurses, and interested parties to request the Director of Health to file an assisted community treatment petition. For requests that satisfy the criteria for assisted community treatment, requires the Director of Health to file a petition for assisted community treatment within a certain number of days. Authorizes the Family Court to use online hearings for assisted community treatment petitions. Requires the Department of Health to report to the Legislature prior to the Regular Session of 2025 on the number of requests for petitions for assisted community treatment submitted to the Director of Health since July 1, 2023. Appropriates funds. Effective 6/30/2050. (SD1)

**Judiciary's Position:**

The Judiciary takes no position on House Bill No. 1156, H.D.2, S.D.1. We wish, however, to express our gratitude for the Committee on Health and Human Services' amendments in S.D.1 (*see* Stand. Com. Rep. No. 1406), which incorporated amendments recommended by the family court in its testimony to the committee.



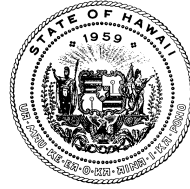
We also wish to express our gratitude for the Committee on Health and Human Services' amendment providing appropriations to the Judiciary "to obtain applicable resources to effectuate this Act, including additional judge positions and increased compensation for guardians ad litem appointed to assisted community treatment cases." (Section 10, lines 1 to 10)

At this juncture, it is difficult to project with reasonable precision the increase in the number of assisted community treatment (ACT) cases that would result from this legislation. We do, however, expect a significant increase from the current volume, which is presently less than one new ACT case filed per week on average. We believe that additional funding of \$150,000 to \$200,000 in each of fiscal years 2023-2024 and 2024-2025 should be sufficient to compensate guardians ad litem appointed to serve in a significantly increased number of ACT cases (for example, three to five new cases filed each week). We respectfully request that the additional funding not supplant the Judiciary's existing funding or budget requests.

Because of the uncertainty regarding how many new ACT cases will be filed if this bill is enacted, we believe it is too early to determine whether we will need additional judges (and staff) to handle an increased volume of ACT cases. Therefore, we will not be requesting additional funding for new judicial positions at this point. With more data, we may need to do so in the future.

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

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



RICHARD RIES, Psy.D., M.Ed.  
COUNCIL CHAIRPERSON  
LUNA HO'OMALU O KA PAPA

STATE OF HAWAI'I  
DEPARTMENT OF HEALTH  
KA 'OIHANA OLAKINO  
STATE COUNCIL ON MENTAL HEALTH  
P.O. Box 3378, Room 256  
HONOLULU, HAWAII 96801-3378

WRITTEN  
TESTIMONY  
ONLY

**STATE COUNCIL ON MENTAL HEALTH**  
**Testimony to the Senate Committee on Judiciary**  
**and Senate Committee on Ways and Means**  
**in SUPPORT of H.B. 1156 H.D. 2 S.D.1**  
**RELATING TO HEALTH**

**Thursday, April 6, 2023 at 10:30 a.m.**

**CHAIRPERSON**

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Chairs Rhoads and Dela Cruz, Vice-Chairs Gabbard and Keith-Agaran, and Members of the Committees:

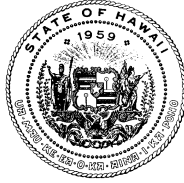
Hawaii law, HRS §334-10, establishes the State Council on Mental Health (SCMH) as a 21-member body to advise on the allocation of resources, statewide needs, and programs affecting more than one county as well as to advocate for adults with serious mental illness, children with serious emotional disturbances, individuals with mental illness or emotional problems, including those with co-occurring substance abuse disorders. Members are residents from diverse backgrounds representing mental health service providers and recipients, students and youth, parents, and family members. Members include representatives of state agencies on mental health, criminal justice, housing, Medicaid, social services, vocational rehabilitation, and education. Members include representatives from the Hawaii advisory commission on drug abuse and controlled substances and county service area boards on mental health and substance abuse.

The SCMH supports the intent of this measure to save lives by helping people with serious mental illness with the treatment they need. SCMH members recognize that involuntary treatment is extremely sensitive, requiring processes that family members do not often know how to navigate. SCMH members encourage clinically smart ways, and that more training and technical assistance should be provided for people who could be assisting more assertively.

Thank you for the opportunity to testify. Should you have any questions, please contact us at [DOH.SCMHChairperson@doh.hawaii.gov](mailto:DOH.SCMHChairperson@doh.hawaii.gov).

VISION : A Hawaii where people of all ages with mental health challenges can enjoy recovery in the community of their choice.

MISSION: To advocate for a Hawaii where all persons affected by mental illness can access necessary treatment and support to live full lives in the community of their choice.



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
**KA 'OIHANA OLAKINO**  
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**Testimony in OPPOSITION to H.B. 1156, H.D. 2, S. D. 1**  
**RELATING TO HEALTH**

SENATOR KARL RHOADS, CHAIR  
SENATE COMMITTEE ON JUDICIARY

SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

Hearing Date, Time and Room: Thursday, April 6, 2023 at 10:46 a.m. in Room 211/VIDEO

1 **Fiscal Implications:** Undetermined.

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

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

6 The purpose of this bill is to amend Hawaii Revised Statutes §334-121.5, §334-123,  
7 §334-124, §334-126, §334-127, §334-131, §334-133 related to Assisted Community Treatment.

8 The Department is committed to addressing the needs of individuals who live with  
9 behavioral health issues and need necessary medical treatment when it is in their best interest.  
10 Assisted Community Treatment (ACT) is an important method to ensure the application of  
11 those services for those who would benefit from treatment over their objection.

12 The Department is committed to supporting the availability and effectiveness of ACT,  
13 including working with state agencies and community partners to improve access and

1 implementation. For example, affected stakeholders would benefit from being provided with  
2 technical assistance and training which we believe would better lead to the desired outcomes  
3 of this measure.

4 The Department **opposes** the Director of Health preparing and filing petitions for  
5 assisted community treatment for other institutions and providers. We strongly believe that  
6 the provider of care needs to prepare and present information for a petition rather than a  
7 third-party like the Department of Health. The provider has the specific patient information  
8 that needs to be conveyed to the court and introducing a third party into the process will be  
9 inefficient and lead to increased costs by the state for the third-party review.

10 DOH is committed to supporting affected stakeholders with technical assistance and  
11 trainings and believes this would better lead to the desired outcomes of this bill. In addition,  
12 SB1492 S.D. 2, H.D. 1 contains several provisions that will enhance the application of ACT  
13 broadly including responding to crisis reports with assessments for appropriateness for ACT,  
14 data collection/reporting on mental health crisis response including involuntary treatment  
15 methods like ACT, and legal support for petitioning from the Department of the Attorney  
16 General.

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

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

20 **Offered Amendments:** None.



Committees: Senate Committees on Judiciary and Ways and Means  
Hearing Date/Time: Thursday, April 6, 2023, 10:46 A.M.  
Place: State Capitol Conference Room 211 & Videoconference  
Re: Testimony of the ACLU of Hawai'i in Opposition of H.B. 1156, H.D 2, S.D. 1  
Relating to Health

Dear Chairs Rhoads and Dela Cruz, and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in opposition of **H.B. 1156 H.D. 2, S.D. 1** which authorizes the State to involuntarily treat individuals with long-acting psychotropic medication under the guise of emergency examination or hospitalization.

The ACLU of Hawaii supports the right of all people, including those living with disabilities and mental health conditions, to make informed decisions relating to their own bodies. *Only in the most exigent of circumstances—where the patient is an imminent danger to themselves or others, where the treatment is in the patient's best interest, and where no less restrictive means exist<sup>1</sup>—may the State intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient's objection.<sup>2</sup>* Anything but the most stringent and careful process in making this determination would fly in the face of an individual's fundamental right to bodily autonomy and would constitute an egregious deprivation of life and liberty.

The right of each person to determine his or her medical treatment is one of the most valued liberties in a democratic society. Too often people with mental health conditions are stripped of virtually all of their civil rights and liberties. We need robust systems and accessible community based treatment services to help people with mental health conditions; not giving State actors decision-making powers that can have long term effects on an individual's life. Most of all, we must recognize that mental health conditions should not be an excuse to deprive someone of their basic civil liberties.

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<sup>1</sup> The Hawai'i Supreme Court has established a three-part test for considering a request to involuntarily treat an individual.

<sup>2</sup> This should be a distinct consideration from an order authorizing an individual's involuntary commitment. "An order authorizing a person's involuntary commitment does not authorize the state to treat the committed person with psychotropic drugs. Nor does it amount to a finding that the patient is incapable of giving or withholding informed consent to submit to such treatment." *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 242 (Alaska 2006).

JUD and WAM Committee Members

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**H.B. 1156, H.D. 2, S.D. 1** would allow an otherwise functioning person who is experiencing a mental health crisis to be committed against their will and forced to take medication for a period of one year or even longer.

The ACLU of Hawai‘i has great concern that passing this bill into law raises the possibility of misuse by family members and other "interested parties" who petition the court (“My spouse is doing drugs”). Committing a person to treatment—including forcibly medicating them against their will—is a significant loss of liberty and freedom, and it is a policy that is inherently doomed to failure due to its punitive nature.

Because this legislation invites abuse and puts otherwise competent individuals at risk of losing their freedom, the ACLU of Hawai‘i requests that the Committee defer **H.B. 1156, H.D. 2., S.D. 1**. Thank you for the opportunity to testify.

Sincerely,

*Scott Greenwood*

Scott Greenwood  
Executive Director  
ACLU of Hawai‘i  
[sgreenwood@acluhawaii.org](mailto: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.*

American Civil Liberties Union of Hawai‘i  
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## TESTIMONY OF ELLEN GODBEY CARSON

### **I write in strong support of HB 1156.**

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

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

HB 1156 will increase the likelihood that persons suffering from severe mental illness or substance abuse will receive timely and appropriate care and treatment. We have miracles of modern medicine that can treat even the most severe mental illnesses. But treatment requires either actual consent or legal procedures for ordering treatment. We owe it to these individuals to provide them life-saving treatment and help restore their lucidity when they lack their own decision-making authority.

HB 1156 will help us better address these needs in the following ways:

- Our “Orders To Treat over Objection” laws (HRS 334-161 and 334-162) currently only help persons committed to the State Hospital. This bill expands those orders to include persons:
  - in DOH director custody at any hospital;
  - subject to an MH4 emergency examination under HRS 334-59(b);
  - subject of an MH6 application for involuntary hospitalization under HRS 334-59(d); and
  - subject to a court order under HRS 704-406(1)(unfit to proceed for criminal trial).All these situations involve persons at imminent risk of harm to self or others, where prompt treatment is warranted to help them get better and either avoid or minimize any time needed in involuntary hospitalization.
- Because these persons are imminently dangerous, HB 1156 requires Orders to Treat proceedings to be brought on an expedited basis with a final order to be rendered within 30 days of the date of the petition, absent exigent circumstances, so that treatment can be promptly provided.



- HB 1156 allows a psychiatric facility or hospital to request the DOH director to file and pursue a petition for an Order to Treat, and allows the facility or hospital to file a petition if the director does not file expeditiously. It is very appropriate for DOH take the lead on these petitions based on community need, just as for involuntary commitment orders.
- Where an MH4 emergency examination occurs, HB 1156 authorizes a psychiatric facility or hospital to request the director to file a petition for order to treat. And where a petition for MH6 involuntary hospitalization is filed, HB 1156 authorizes the petitioner to seek an order to treat. Expediting these orders at these points allows early intervention and prompt treatment which may avoid altogether or at least diminish, the time needed in involuntary hospitalization.
- Where involuntary commitment is requested, HB 1156 authorizes a simultaneous request for an order to treat, so as to minimize the time of involuntary hospitalization without any treatment. It is cruel to many of these individuals, who lack decisional authority, to be committed indefinitely to involuntary hospitalization, with no means to provide treatment until an order to treat is obtained.

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

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

Ellen Godbey Carson, Honolulu, Hawaii