

The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2024 Regular Session

House Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice-Chair

February 28, 2024 at 10:00 a.m.
Conference Room 308 and Via Videoconference

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 2159, H.D. 2, Relating to Mental Health.

Purpose: Part I: requires the Department of the Attorney General to assist with the preparation and filing of petitions for assisted community treatment and with the presentation of the case, unless declined by the petitioner. Part II: repeals language entitling the subject of a petition for assisted community treatment to legal representation by a public defender. Part III: provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Part IV: authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation. Effective 7/1/3000. (HD2)

Judiciary's Position:

The Judiciary strongly supports the overall intent of this legislation, and specifically supports Sections 8 – 10 and Part IV, as each of these parts, and all of them together, will improve the government response to individuals suffering from mental health challenges, particularly for those who may become, or already are, involved in the criminal justice system. While the Judiciary offers no comments on Parts I and II and Section 11 of the measure, we offer the following comments on the remainder of the legislation.

As noted, the Judiciary strongly supports the provisions outlined in Sections 8 – 10 of the measure as these amendments were supported by the Judiciary last session when they were a part of the larger House Bill (HB) 1442, HD2, SD1, which went to conference committee and was

carried over to this session. These provisions are critical to ensuring that the defendants who are diverted from the criminal justice system are properly evaluated and assessed to determine what types of services they may require, and what can be offered to them, whether inpatient, outpatient, or community based, upon the dismissal of the criminal case.

In addition, the Judiciary strongly supports the provisions of Part IV that were also contained in HB1442, HD2, SD1, which will permit the court to divert a probation violator to mental health evaluation and treatment as a condition of continued probation rather than simply revoking that probation. This will provide the court with valuable tool to both determine and address whether an individual may be having difficulty with the terms and conditions of their probation due to a mental disease, disorder, or defect instead of requiring a revocation of that individual's probation. If, after being assessed and treated, it is determined that the defendant's conduct on probation is not the result of a mental disease, disorder, or defect, or the defendant fails to comply, then the court may continue with the motion for revocation.

While the Judiciary supports these provisions as part of the overall blueprint to improve the government response to individuals suffering from mental health challenges, particularly for those who may become, or already are, involved in the criminal justice system, the present bill does not include the appropriations for these provisions that were included in HB1442, HD2, SD1. Respectfully, the Judiciary requests that the measure be amended to include the appropriation of funds to provide the job position necessary to support implementation of this bill and the broader jail diversion program. Specifically, the Judiciary requests the appropriation set forth in Part I, Section 6 of HB1442, HD2, SD1, for the law clerk position tasked with cases under Chapter 704 and the Circuit Court of the First Circuit Jail Diversion Program. For fiscal year 2025 this amount is estimated to be a salary of \$71,016, plus benefits. The Judiciary respectfully requests that this appropriation be included in either the present bill (as that appropriation is referenced for this Committee's consideration in Standing Committee Report No. 558-24 from the House Committee on Judiciary and Hawaiian Affairs) or in HB2451, HD2, which is also before the Committee today.

Finally, the Judiciary respectfully requests that any appropriations added to this bill not supplant the Judiciary's existing funding and current budget requests.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2159, H.D. 2, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 28, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 308 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ian T. Tsuda, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments:

The purposes of this bill are to (1) require the Department to assist in the preparation, filing, and presentation of petitions for Assisted Community Treatment (ACT) when requested, (2) repeal section 802-1(a)(3), Hawaii Revised Statutes (HRS), regarding legal representation by the Public Defender for the subjects of ACT proceedings, (3) amend section 704-404(2), HRS, to make it inapplicable to proceedings under the jurisdiction of the family court, (4) create a mechanism for individuals charged with nonviolent petty misdemeanors, whose fitness remains an outstanding issue, to be automatically screened for involuntary hospitalization or ACT, (5) decrease the offense of escape in the second degree under section 710-1021, HRS, from a class C felony to a petty misdemeanor if the defendant escaped while under the custody of the Director of Health due to a nonviolent petty misdemeanor charge, and (6) authorize courts to require a probation violator to participate in a mental health evaluation and treatment program when there is reason to believe the violation was associated with a mental disease, disorder, or defect of the defendant.

The amendments to sections 704-404(2) and 710-1021, HRS, in this bill might be considered to be outside the scope of the original bill, necessitating additional readings to comply with constitutional requirements. In *League of Women Voters of Honolulu v.*

State, 150 Hawai'i 182, 205, 499 P.3d 382, 405 (2021), the Hawaii Supreme Court held that a bill's three readings in each house must "begin anew" if a "non-germane amendment changes the object or subject of a bill so that it is no longer related to the original bill as introduced." The object of this bill, in its original draft, was to require the Department to assist petitioners with the preparation, filing, and presentation of petitions for ACT proceedings, which involve individuals suffering from mental illness or substance abuse who have a history of treatment noncompliance and require treatment to prevent relapse or deterioration that would predictably result in them becoming imminently dangerous to self or others. Section 334-121, HRS. While the majority of amendments in H.D. 2 of this bill share a common tie to that objective, the jurisdictional amendment to section 704-404(2), HRS, made by section 9 of this bill, on page 9, line 20, to page 10, line 2, as well as the criminal penalty reduction in some circumstances of escape under section 710-1021, HRS, made by section 11 of this bill, on page 16, lines 14-21, however, could be viewed as dissimilar and discordant, leaving the bill susceptible to the requirement of additional readings.

To reduce the risk that additional readings of this bill be required, the Department recommends that sections 9 and 11 be removed.

The Department respectfully requests that the Committee consider these recommendations.

Thank you for the opportunity to testify.

JON N. IKENAGA
STATE PUBLIC DEFENDER

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February 28, 2024

Committee on Finance
Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair
415 South Beretania Street, Conf. Rm. 308
State Capital
Honolulu, HI 96813

Re: Testimony in Support of H.B. 2159
Hearing: February 28, 2024, 10:00 AM

Dear Chair Yamashita, Vice Chair Kitagawa and Committee Members:

This letter is in support of H.B. 2159 to the extent that it (1) amends the law to effectively maintain consistency and uniformity with the mandates of the Office of the Public; (2) provides the court with additional treatment and placement options for those undergoing fitness examinations; (3) creates a petty misdemeanor offense of escape under certain circumstances; and (4) allows the court to order a defendant to undergo a mental health evaluation and treatment when there is reason to believe that a probation violation is associated with a mental disease, disorder or defect. The Office of the Public Defender takes no position as to requiring the Department of the Attorney General to assist in the preparation and filing of petitions brought pursuant to HRS §§ 334-123 and 334-133.

H.B. 2159 amends the law for consistency and uniformity by omitting the Office of the Public Defender in cases involving petitions for assisted community treatment under Hawaii Revised Statutes Chapter 334. This omission is consistent with the mandates of the Office of the Public Defender in providing legal representation for those whose liberty interests are at risk because assisted community treatment does not fall under those parameters.

H.B. 2159 also provides mental health treatment options including involuntary hospitalization, assisted community treatment and release with conditions while a defendant is undergoing a fitness examination. Similarly, where there is a reason to believe that a mental health issue is associated with a probation violation, the probation violation is appropriately addressed through a mental health evaluation and possible treatment. Although this assessment could be beneficial to the defendant, it may be detrimental for the defendant to be saddled with the financial cost of the assessment and treatment. In addition, should the defendant not comply

with mental health treatment, additional treatment options should be explored and employed, including the aforementioned treatment options, prior to revoking the defendant's probation.

Finally, the creation of a petty misdemeanor offense of escape for nonviolent petty misdemeanor offenders under the custody of the director of health would be beneficial to those individuals where fitness is not an issue. A petty misdemeanor escape charge is more appropriate than a class C felony charge. Although fitness is likely an issue for everyone who is in the custody of the director of health, those who are not fit should not be penally responsible. The focus of individuals in the custody of the director of health continues to be mental health treatment, fitness restoration and long term stability. To the extent that H.B. 2159 furthers those goals, the Office of the Public Defender is in support of those measures.

Thank you for taking these comments into consideration.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • TTY (808) 586-8162 • Fax (808) 586-8129

February 28, 2024

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

House Bill 2159 HD2 – Relating to Mental Health

The Disability and Communication Access Board (DCAB) supports House Bill 2159 HD2 – Relating to Mental Health.

This bill requires the Department of the Attorney General to assist with the preparation and filing of petitions for assisted community treatment and with the presentation of the case, unless declined by the petitioner. It repeals language entitling the subject of a petition for assisted community treatment to legal representation by a public defender. It provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. And it authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation.

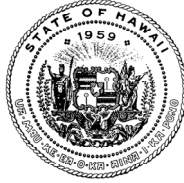
People with mental health issues often are caught up in the criminal justice system, which is unfair to the individuals and stresses the resources of the criminal justice system. Community treatment is beneficial in multiple ways.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

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



KENNETH S. FINK, M.D., M.G.A, M.P.H
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WRITTEN
TESTIMONY ONLY

**Testimony in SUPPORT of H.B. 2159 H.D. 2
RELATING TO MENTAL HEALTH**

REPRESENTATIVE KYLE T. YAMASHITA, CHAIR
HOUSE COMMITTEE ON FINANCE

Wednesday, February 28, 2024, 10:00 a.m. in Room 308 and Via Videoconference

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department supports this measure and offers comments.

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

5 The Department supports this measure and concurs that assisted community treatment
6 (ACT) orders provide a potentially highly effective means to improve treatment adherence and
7 achieve significantly better health outcomes for individuals suffering from serious mental
8 illnesses. Furthermore, the Department supports the requirement of the Department of the
9 Attorney General to assist with the preparing and filing of any petition brought pursuant to the
10 Hawaii Revised Statutes, and with the presentation of the case at any related court
11 proceedings.

12 In the community, the Department benefits from Attorney General assistance in
13 preparing and filing ACT petitions. However, some community providers have used their own
14 attorneys to complete these petitions. Currently, the majority of petitions have been done by
15 the community.

1 The Department supports ACT orders as being a potentially valuable component for
2 individuals being treated successfully in the community; however, any opinions on legal
3 processes contained in this bill are deferred to the Department of the Attorney General or
4 other appropriate legal experts.

5 The Department's recommendations reflect the operations of the Hawaii State Hospital
6 and the AMHD. We defer to the Department of the Attorney General where their input is
7 required.

8 **Offered Amendments:** None.

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

HB-2159-HD-2

Submitted on: 2/26/2024 4:23:58 PM

Testimony for FIN on 2/28/2024 10:00:00 AM

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

Comments:

We have great concerns about this bill, and believe it may cause serious due process constitutional violations of the rights of individuals with a mental illness.

Last year the Legislature authorized the Attorney General to assist in the filing and preparation of ACT Petitions. This Bill greatly expands their role to make them a full participant in what is supposed to be a legal proceeding. We understand that Petitions are often filed by people who are unfamiliar with the legal system and so we can understand how the Attorney General would be helpful to them.

However, a few years ago the Legislature made the decision to strip Respondents in these proceedings of their right to be represented by the Public Defender. It substituted a Guardian Ad Litem who I think all lawyers will agree is not the same thing. A Guardian Ad Litem may advocate for the so called " best interests" of the Respondent while a Public Defender may be more likely to advocate for the articulated wishes of that individual. At the time that decision was made, most of the Petitioners were unrepresented as well so there arguably may have been less of an imbalance. However, if this measure passes the scales will be substantially tilted against the Respondents in these cases and that may well create serious due process considerations that need to be examined. Certainly if the Legislature is going to consider having the Attorney General be a full party to the case, it should equally consider restoring the right to free counsel for the individuals who are the subject of the proceedings. In fact we would argue that it must restore the right to counsel in that case. That would hardly be extraordinary. Essentially, it would provide that the ACT proceedings be conducted in the same traditional manner as virtually all other hearings which occur in the Judicial system.

There are some provisions in the Bill that we think are positive. For example, screening for civil commitment or more likely assisted community treatment does seem to be reasonable. We do though have some concerns about the timeline in which a person committed to the Health Director would have to wait in custody, since the ACT process can take a while. Additionally, requiring mental health treatment as a condition of probation is helpful to everyone. However, the bill says if they cannot then benefit from the treatment their probation can be revoked. That may be unfair if the treatment turns out to be inappropriate for some reason and they otherwise were compliant. There ought to be some provision to address that scenario.

We do support the idea of having the flexibility in the case of non violent petty misdemeanors to not commit Defendants to the custody of the Health Director as well as the ability to dismiss the charges if fitness cannot be restored.



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

TO: Honorable Rep. Kyle T. Yamashita
Chair, House Committee on Finance

Honorable Rep. Lisa Kitagawa
Vice Chair, House Committee on Finance

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

RE: [HB2159 HD2](#) - Relating to Mental Health

HEARING: Wednesday, February 28, 2024, at 10:00 AM

POSITION: IHS supports the passing of HB2159 HD2

As a homeless service provider with broad experience outreaching chronically homeless individuals, including filing petitions for Assisted Community Treatment in the State of Hawai'i, The Institute for Human Services (IHS) strongly supports this bill.

In our years of outreaching, motivating sheltering, and treating mentally ill homeless individuals, IHS has encountered barriers within our mental health and legal systems precipitated by outdated statutes. We support the changes proposed herein.

We support the removal of appointment of a public defender to represent an individual that is subject to assisted community treatment. The judge is already required to appoint a Guardian Ad Litem to represent the best interests of the individual subject to ACT. In most cases, the subject of the petition lacks capacity to meaningfully collaborate with an attorney and in the few instances where he/she might have such capacity, the individual may choose to express such wishes before the court and attempt to demonstrate such decisional capacity.

Having the Attorney General's office assist with petitioning is a huge step in the direction of making assisted community treatment more possible for those mentally ill individuals who need it. The treatment ordered via ACT is life-saving and helps individuals regain their decisional capacity.

WE support strongly requiring individuals displaying symptoms of mental illness that results in an emergency transport by police to be provided an emergency evaluation to determine appropriateness for ACT.

Mahalo for the opportunity to testify.



Committee: Finance
Hearing Date/Time: Wednesday, February 28, 2024, at 10:00 am
Place: Conference Room 308 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in OPPOSITION to H.B. 2159, H.D. 2 Relating to Mental Health**

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The ACLU of Hawai'i **opposes Part II of H.B. 2159 H.D. 2 which** proposes to repeal language entitling the subject of a petition for assisted community treatment to legal representation by a public defender.

The ACLU of Hawai'i strongly opposes Part II that strips away legal representation for indigent persons subject to Assisted Community Treatment petitions, violating due process rights affords under our federal and Hawai'i Constitutions.

Below, we offer historical context to ground our Constitutional objections.

In 2021, the State Legislature introduced a measure to eliminate the right to counsel for persons subject to Assistant Community Treatment petitions. Written testimony from the **Department of Attorney General, dated February 11, 2021**, on HB 345 Relating to Assisted Community Treatment, to amend H.R.S. 334, reflected their constitutional concerns:

"The appointment of counsel is one of the significant provisions of the ACT to afford subjects due process under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Constitution of the State of Hawai'i. This bill's proposed removal of the right to counsel would remove a significant protection afforded by the procedures of the ACT statutes. For these reasons, the Department recommends the provisions regarding the removal of the right to counsel be deleted from the bill."

During discussion of HB 345, the **Department of Health** also expressed their reservations:

"We continue to strive for a balance with individuals suffering from acute mental illness where they can be treated during a time where they are, for all intents and purposes 'unconscious,' but still assure that their right to self-determination and representation during proceedings will be honored," the department wrote in testimony. ***"As written, we do not believe that this measure strikes that balance."***

We also understand that the Office of the Public Defenders weighed in on this matter. "The Office of the Public Defender offered the following comments on H.B. No. 345 HD1:

Article I, section 14 of the Hawai'i Constitution provides, "The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment." (Emphasis added). Accordingly, OPD did not object to the original bill "as long as guardian ad litem (GAL) was appointed to represent the interest of the individual because the individuals subject to the ACT petitions are not threatened by confinement or imprisonment."

While we acknowledge the Public Defender's legal interpretation of the Hawai'i Constitution as it relates to their mandate, **we agree with the Department of Attorney General's prior written testimony that persons subject to an ACT petition must be afforded counsel under the Fourteenth Amendment of the U.S. Constitution and article I, section 5, of the Hawai'i Constitution.**¹

The Hawai'i Supreme Court has affirmed *that the right of each person to determine his or her medical treatment is one of the most valued liberties in a democratic society. 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—may the State intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient's objection.* See *State v. Kotis*, 984 P.2d 78, 91 Hawai'i 319 (1999). <https://law.justia.com/cases/hawaii/supreme-court/1999/18823-2.html>

A number of proponents for removing Part II affording legal representation have argued that indigent individuals subject to ACT petitions are afforded the appointment of Guardian Ad Litem (GALS). However, GALs must abide by a different standard than attorneys. GALs are expected to make recommendations based on the "best interest of the individual" whereas attorneys have a legal duty to provide zealous representation and protect the Constitutional rights of their client, including those living with or perceived disabilities, where decision-making relates to personal or bodily autonomy – including the right to determine medical treatment.

Under the proposed measure, the State Legislature will be sanctioning an imbalanced legal proceeding where the State, via the Attorney General's office, **is mandated to file** petitions to the Family Court for an order of continued Assisted Community Treatment (including coercive or forced treatment) against a pro se individual for up to two years unless the petitioner declines the assistance.² The lack of due process procedural safeguards in place simply because a person has a mental health condition and/or co-occurring condition is constitutionally suspect.

Removing legal counsel, whether a Public Defender or court appointed counsel from the ACT process, a closed legal proceeding in Family Court, violates a person's due process rights under our federal and state Constitutions.

¹ The Department of Attorney General issued an opinion last year relating to Assisted Community Treatment yet did not squarely address the issue whether indigent persons subject to ACT petitions are entitled to legal representation. However, the opinion acknowledges that ACT orders can include medical treatment. <https://ag.hawaii.gov/wp-content/uploads/2023/04/AG-Opinion-23-01.pdf>

² Hawai'i Judiciary form to initiate a Petition for Assisted Community Treatment <https://www.courts.state.hi.us/wp-content/uploads/2023/07/3CP553.pdf>

Other States Afford Individuals Subject to Assisted Outpatient Treatment Petitions Legal Representation

Hawaii's Assisted Community Treatment laws are modeled after Assisted Outpatient Treatment processes in other jurisdictions. Significantly, states such as New York³, California⁴, Washington, and Utah, to name a few, afford individuals the right to legal representation throughout the AOT legal proceedings.

Proposed Amendments

We offer the following amendments to remedy this constitutional violation:

1. Amend Part II and add language that any indigent person subject to a petition for assistant community treatment shall be entitled to legal representation by a public defender or
2. Amend Part II and add language that any indigent person subject to a petition for assistant community treatment shall be entitled to legal representation by court appointed counsel.

Other Concerns

- We agree with concerns raised by Hawai'i Disability Rights Center relating to the timeline in which a person committed to the Director of Health would have to wait in custody.
- Hawai'i has the longest average length of probation within the United States. Revoking individuals on probation supervision for failing to comply with treatment alone contravenes best practices and harm reduction strategies. We have limited treatment options in Hawai'i, and revoking a person for non-compliance when the treatment was inappropriate is punitive, not therapeutic.

Thank you for the opportunity to submit testimony and propose amendments to remedy the constitutional violations that H.B. 2159, H.D. 2 will effectuate if passed as currently drafted.

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota
Policy Director
ACLU of Hawai'i
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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.

³https://my.omh.ny.gov/analytics/saw.dll?dashboard&PortalPath=%2Fshared%2FAOTLP%2F_portal%2FAssisted%20Outpatient%20Treatment%20Reports&nquser=BI_Guest&nqpassword=Public123

⁴ <https://namisantaclara.org/wp-content/uploads/2014/11/Lauras-Law-AB1421.pdf>



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

February 28, 2024

TO: Chair Kyle T. Yamashita
Vice Chair Lisa Kitagawa
Members of the Committee on Finance

FR: Bruce Coppa, Member
Board of Directors
IHS, The Institute for Human Services, Inc.

RE: HB2159 HD2 Relating to Mental Health. – **SUPPORT**

As a homeless service provider with broad experience outreaching chronically homeless, including filing petitions for assisted community treatment in the State of Hawai'i, the Institute for Human services (IHS) strongly supports this bill.

In our years of outreaching, motivating sheltering and treating mentally ill homeless individuals, IHS has encountered barriers within our mental health and legal systems precipitated by outdated statutes. We support the changes proposed herein.

We support the removal of appointment of a public defender to represent an individual that is subject to assisted community treatment. The judge is already required to appoint a Guardian Ad Litem to represent the best interests of the individual subject to ACT. In most cases, the subject of the petition lacks capacity to meaningfully collaborate with an attorney and in the few instances where he/she might have such capacity, the individual may choose to express such wishes before the court and attempt to demonstrate such decisional capacity.

Having the Attorney General's office assist with petitioning is a huge step in the direction of making assisted community treatment more possible for those mentally ill individuals who need it. The treatment ordered via ACT is lifesaving and helps individuals regain their decisional capacity.

WE support strongly requiring individuals displaying symptoms of mental illness that results in an emergency transport by Police to be provided an emergency evaluation to determine appropriateness for ACT.

Mahalo for the opportunity to testify.

HB-2159-HD-2

Submitted on: 2/27/2024 7:50:54 AM

Testimony for FIN on 2/28/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill, which makes some essential changes to our Assisted Community Treatment laws (ACT).

While I write as an individual, I have served as president of IHS and the Hawaii State Bar Association, with a commitment toward helping change our laws to better address the needs of our neighbors who are chronically mentally ill and/or suffering from substance abuse.

ACT laws play a critical role in our continuum of care for our most vulnerable residents. ACT provides a legal hearing process that allows intervention for seriously mentally ill persons that can get them the treatment they need, before they become so ill that they die, cause injury or need involuntary civil commitment.

This bill makes essential changes to allow more mentally ill people to be evaluated for civil commitment and ACT, and assists in getting them treatment earlier, before they hurt themselves or someone else.

The bill also makes clear the Attorney General's office should provide the legal services for pursuing ACT petitions. This essential change mirrors the AG's role in civil commitment hearings, acting on behalf of the State, in seeking to provide appropriate treatment for these individuals. Private attorneys are still allowed to represent private petitioners if they wish.

And the bill removes the final vestiges of Public Defender being involved in ACT cases. The Public Defender is not appropriate in ACT cases because no involuntary custody is entailed in the ACT proceedings, and this fulfills the intent of earlier amendments in that regard.

Please support passage of this bill.

Thank you for consideration of my testimony.

Ellen Godbey Carson, Honolulu, Hawaii

DATE: February 27, 2024

TO: Honorable Representative Kyle T. Yamashita
Chair, House Committee on Finance

Honorable Representative Lisa Kitagawa
Vice Chair, House Committee on Finance

FROM: Christopher D. Thomas, Attorney at Law

RE: Public Comment and Testimony Regarding HB 2159 HD2

POSITION: Support the passing of legislation affecting Assisted Community Treatment

My name is Christopher Thomas; I am an attorney in Honolulu, and I obtain Assisted Community Treatment (ACT) Orders for the Institute of Human Services (IHS). Via IHS, our team of Psychiatrists, Outreach Workers, and Attorneys represent the highest utilizers of ACT Orders within Hawai'i. We have treated, and continue to treat, a large percentage of O'ahu's seriously mentally ill and substance addicted homeless population. Our ACT statute, housed in HRS Chapter 334 is one of the most useful laws we use to ensure the most vulnerable of our citizens receives the treatment they have the right to obtain.

I support HB 2159 HD2 as a practical and commonsense Amendment to our laws to match the intent of prior legislation which Amended ACT process and procedure.

Regarding Attorney General Representation of ACT Petitioners

As it currently stands, private entities such as the Institute for Human Services, are performing the bulk of ACT Petitions, litigation, and treatment. In effect, IHS is taking the burden of ACT treatment on their own shoulders, when the State has the inherent responsibility (and more robust financial resources) to our citizens to treat serious mental illness in our community. Requiring Attorney General involvement in petitioning for ACT Orders and Treatment of individuals upon release from involuntary hospitalization is a natural "hand-off" of hospitalized patients to the benefits of ACT "street medicine." HB 2159 HD2 merely makes this hand-off mandatory, versus discretionary. The amendment would require greater use of our existing ACT statute and benefit our citizens accordingly.

My understanding of successful mental health programs and providers who utilize similar laws in other States is that robust involvement of government is essential in implementing a comprehensive ACT program. IHS cannot be continued to be relied upon in perpetuity to carry this mission forward: providing our best mental health services to our State's seriously mentally ill population.

Regarding Public Defender Representation to ACT Respondents

As you are likely aware, in 2021, Chapter 334 was amended to relieve the State of Hawai'i Public Defender's (PD's) attorneys from the burden of being appointed as mandatory counsel to

ACT Respondents/Patients. Chapter 334 was further amended to make the appointment of a Guardian Ad Litem (GAL) to ACT Respondents mandatory, versus discretionary. Prior to the PD's being removed from mandatory appointment, ACT Petitions were unreasonably delayed due to a myriad of logistical and procedural entanglements. Prior to 2021, my experience is that mandatory PD appointment actually served to thwart the purpose of ACT Orders: to get patients efficiently treated. Appointment of a GAL in lieu of PDs has streamlined ACT Orders and produced more efficient treatment.

Unfortunately, while Chapter 334 was Amended to remove PD representation, a corresponding edit to Chapter 802 Section 1(a)(3) was neglected. As a result, HRS 802-1(a)(3) remains in conflict with Chapter 334-121 through 136. An Amendment is necessary to remove PD appointment remaining in Chapter 802. HB 2159 represents that necessary Amendment.

From a practitioner's standpoint gleaned from the last five years of litigating ACT cases, the mandatory appointment of GALs to ACT cases adequately balances the need for an ACT Respondent to have an advocate to guide them through the ACT process with the need of the community to immediately and swiftly treat illness/substance abuse. An ACT Respondent is provided adequate due process in a civil matter through protection via the statute, a trial judge, a psychiatrist, and a GAL. Public Defender mandatory representation is, therefore, not necessary. The neglected corresponding Amendment to HRS 802-1(a)(3) is overdue.

I respectfully request that HB 2159 HD2 be given your full support through the legislative process.

Respectfully submitted,
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