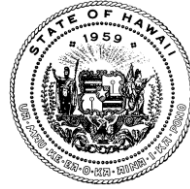


JOSH B. GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA
MOKU'ĀINA 'O HAWAI'I



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 Health and Human Services
in SUPPORT of H.B. 1156 H.D. 2
RELATING TO HEALTH

Wednesday, March 22, 2023 at 1:01 p.m.

CHAIRPERSON

Richard I. Ries PsyD, MSEd

1st VICE CHAIRPERSON

Katherine Aumer, PhD

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Kau'i Seguancia

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Jean Okudara, CSAC

Ray Rice, MEd

Mary Pat Waterhouse

Kristin Will, MACL, CSAC

EX-OFFICIO:

Marian Tsuji, Deputy Director
Behavioral Health Administration

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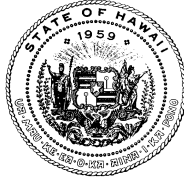
Chair San Buenaventura, Vice-Chair Aquino, and Members of the Committee:

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. This measure should help family members. SCMH members encourage clinically smart ways and agree that more training 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.

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
P. O. Box 3378
Honolulu, HI 96801-3378
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Testimony in OPPOSITION to H.B. 1156, H.D. 2
RELATING TO HEALTH

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date, Time and Room: Wednesday, March 22, 2023 at 1:00 p.m. in Room 225/VIDEO

1 **Fiscal Implications:** Undetermined.

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

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

6 Administrative Authorization Process

7 The purpose of Part I of this measure is to temporarily amend §334-59, §334-121.5,
8 §334-60.3, §334-161, §334-162, Hawaii Revised Statutes until July 1, 2026.

9 The Department is committed to addressing the needs of individuals who live with
10 behavioral health issues and need necessary medical treatment when it is in their best interest.
11 Methods to establish authorization to treat are important to ensure the application of those
12 services for those who would benefit from treatment over their objection. The Department is
13 committed to supporting the availability and effectiveness of court and administrative
14 procedures to obtain authorization to treat over objection including working with state
15 agencies, the Judiciary, and community partners to improve access and implementation.

1 We support expedited processes for obtaining authorization and reducing the time to
2 initiate treatment including submitting a petition for authorization to treat concurrently with a
3 petition for civil commitment, legal assistance for filing petitions, and authorization to treat in
4 the time period between filing a petition and obtaining an order for commitment. Additionally,
5 we support extending the availability of the administrative authorization process to patients
6 who are subject to a petition for involuntary hospitalization.

7 However, the Department **opposes** the Director of Health filing petitions for an order to
8 treat over objection or convening an administrative panel pursuant to §334-162, Hawaii
9 Revised Statutes, for other institutions. We strongly believe that the provider of care needs to
10 prepare and present information for a petition rather than a third party like the Department.
11 The provider has specific patient health information that needs to be conveyed to the court.
12 Introducing a third party into the process will be inefficient and lead to increased costs by the
13 state for the third party review. Further, we strongly believe that the facility or hospital should
14 convene an administrative panel rather than a third party.

15 We have significant concerns about the feasibility of adequately implementing the court
16 petition for treatment over objection and the administrative authorization process in the
17 setting of an emergency examination pursuant to §334-59(a) or (b), Hawaii Revised Statutes. A
18 significant logistic barrier involves holding an individual in the emergency department or
19 behavioral health crisis center for several days or more in the pendency of a petition through
20 the judicial process or to allow for the process due an individual subjected to the administrative
21 authorization process.

22 Assisted Community Treatment

23 The purpose of part II of this bill is to amend Hawaii Revised Statutes §334-121.5, §334-
24 123, §334-124, §334-126, §334-127, §334-131, §334-133.

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

5 The Department is committed to supporting the availability and effectiveness of ACT,
6 including working with state agencies and community partners to improve access and
7 implementation. For example, affected stakeholders could benefit from being provided with
8 technical assistance and training which we believe would better lead to the desired outcomes
9 of this measure.

10 We support expedited processes for ACT petitioning procedures including generating
11 final orders within thirty days of filing, use of online hearings, and stipulated orders without
12 undergoing an evidentiary hearing. Submitting a report on the number of requests for ACT
13 petitions submitted to the Director of Health for the 2025 legislative session is doable within
14 our current staffing and resources.

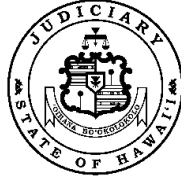
15 The Department **opposes** the Director of Health filing and preparing petitions for assisted
16 community treatment for other institutions and providers. We strongly believe that the provider of care
17 needs to prepare and present information for a petition rather than a third-party like the Department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

21 DOH is committed to supporting affected stakeholders with technical assistance and trainings
22 and believe this would better lead to the desired outcomes of this bill. In addition, SB1492SD2 that
23 received a hearing earlier today in the House Committee on Health and Homelessness contains several
24 provisions that will enhance the application of ACT broadly including responding to crisis reports with
25 assessments for appropriateness for ACT, data collection/reporting on mental health crisis response
26 including involuntary treatment methods like ACT, and legal support for petitioning from the
27 Department of the Attorney General.

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

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

4 **Offered Amendments:** None.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

Senate Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Wednesday, March 22, 2023 at 1:01 p.m.
State Capitol, Conference Room 225 & Videoconference

by

Matthew J. Viola

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

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

Purpose: Part I: Authorizes the provision of long-acting psychotropic medication to patients who are subject to emergency examination or hospitalization. Establishes and amends provisions related to administration of treatment over a patient's objection. Sunsets 7/1/2026. Part II: Establishes and amends provisions related to petitions for assisted community treatment. Requires DOH to report to the legislature. Effective 6/30/3000. (HD2)

Judiciary's Position:

The Judiciary takes no position on House Bill No. 1156, H.D.2. We respectfully offer the following comments.

1. The amendments proposed to Hawai‘i Revised Statutes § 334-59(b) in Part I, Section 2 are confusing and ambiguous.

Hawai‘i Revised Statutes (HRS) § 334-59 covers the emergency examination process that allows medical personnel to determine whether commitment to a hospital is necessary.

Individuals transported to hospitals for examination are only hospitalized after the examining doctor or advanced practice registered nurse determines that the criteria for involuntary hospitalization persist. If the examiner determines that the criteria for involuntary hospitalization are not met or do not persist, the individual “shall be discharged expediently” into



the community or to the custody of a law enforcement officer if there are criminal charges.
HRS § 334-59(c).

The proposed amendment to HRS § 334-59(b) at page 3, lines 10-20 may require the Director of the Department of Health to pursue a requested petition for an order for treatment over objection prior to a determination that the individual meets the criteria for involuntary hospitalization. This may result in instances where the Director pursues a “standalone” petition for treatment over the objection of an individual who has *already been discharged* into the community, i.e., where the examiner determines that the criteria for involuntary hospitalization are not met.

An assisted community treatment order is the more appropriate vehicle to compel an individual in the community to engage in medical treatment. We note that HRS § 334-59(b) already requires an examination for assisted community treatment pursuant to HRS § 334-121.5, if the examiner “determine[s] that involuntary hospitalization is not needed[.]”

We respectfully suggest that this committee delete the proposed amendment to HRS § 334-59(b) at page 3, lines 10-20 of this bill:

~~The psychiatric facility, behavioral health crisis center, or hospital where the patient is held may request the director to file a petition for an order for treatment over the patient’s objection. The request for petition shall include supporting information. The director shall review such request expeditiously and if the request appears to satisfy the four factors in section 334—161, the director shall file and pursue a petition to request an order for treatment over the patient’s objection as soon as possible in court or, upon request by the facility, behavioral health crisis center, or hospital, convene an administrative panel pursuant to section 334-162.~~

As noted, this does not leave the patient without assistance since the existing statute already requires an ACT exam if hospitalization is not needed.

We also respectfully suggest that this committee delete this language on page 7, lines 8 to 11:

~~. . . is transported to a psychiatric facility for emergency admission pursuant to section 334-59(a); is delivered to a psychiatric facility or a behavioral health crisis center for an emergency examination under section 334-59(b); . . .~~



2. Part II, Section 9 of the bill, which requires courts to “endeavor to file a final order” on an assisted community treatment (ACT) petition within thirty days of the date the petition is filed unless “exigent circumstances exist,” may not be achievable.

We fully recognize the need to hear and decide ACT petitions expeditiously. While hearings are set as soon as possible -- as the existing statute already requires (HRS § 334-124) -- entering final orders within thirty days may not always be achievable.

Guardians ad litem (GAL) are appointed immediately upon filing of a petition. An initial hearing on the petition is typically set within a couple of weeks. If a contested hearing is requested and the parties indicate they are prepared to proceed with an evidentiary hearing, the hearing can be set within a month of the initial hearing. That time frame, however, is not always possible or advisable. For example, at times the petitioner needs more time to effect proper service on the subject or interested parties; sometimes the petitioner, the petitioner’s attorney, the GAL, the psychiatrist who has assessed the subject, or other important witnesses are not all available on relatively short notice. At times, the subject is incarcerated or difficult for the GAL to contact.

Further, the proposed language allowing more than thirty days for an order to be entered is ambiguous. Specifically, what “exigent circumstances” means in this context is unclear. If this provision remains, we respectfully suggest replacing “exigent circumstances exist” (p.16, lines 15-16) with “good cause exists”.

Finally, what happens if the thirty day deadline is not met is unstated. If the intent is that the petition be dismissed, we respectfully submit that it would undermine the goal of expediting these cases.

We respectfully suggest the deletion of language on page 16, lines 15 to 17:

~~Unless exigent circumstances exist, the court shall endeavor to file a final order on the petition within thirty days of the date the petition is filed.~~

3. Part II, Section 11 adds a provision to HRS § 334-127 authorizing the court to enter ACT orders based on the subject’s stipulation (p. 20, lines 19-21 to p. 21, lines 1-7).

The Judiciary has concerns about this provision.

First, given the constitutional liberty interests at issue in ACT cases, any stipulation to an order must be knowing and voluntary. Allowing subjects of these provisions to agree to ACT orders presumes that they have the mental capacity to do so knowingly and voluntarily. One of



the statutory elements that must be proven by *clear and convincing evidence* in ACT cases is that the subject's "current mental status or the nature of the disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with the recommended treatment[.]" HRS § 334-121(2). This statutory requirement may effectively preclude a finding that the subject knowingly and voluntarily stipulated to the proposed order, which requires the subject to comply with specific treatment.

Further, while the proposed provision allows the court appointed GAL to object to the entry of an ACT order without an evidentiary hearing, it should be noted that the role of the GAL is to represent the best interests of the subject; they are not the subject's lawyer and cannot give the subject legal advice. The provision in the proposed statute permitting the GAL to object to a stipulated order may place GALs in a difficult ethical position.

We respectfully suggest that the committee delete the new subsection HRS § 334-127(e) at page 20, lines 19-21 to page 21, lines 1-7):

~~(e) The subject may stipulate to a petition for assisted community treatment if the subject is provided a proposed order for community assisted treatment, including the proposed treatment plan, either at the time the petition is filed or prior to entry of the court's order on the petition. If the subject stipulates to the proposed order, including the proposed treatment plan, by signing the proposed order, then the court may enter the stipulated order without undergoing an evidentiary hearing, unless the guardian ad litem objects to entry of an order without an evidentiary hearing."~~

4. Part II, Sections 7, 8 and 13 allow interested parties to request the Director of the Department of Health to file ACT petitions.

The Judiciary takes no position with respect to these provisions, but wishes to note that if the result of these provisions is to substantially increase the number of ACT petitions filed in Family Court, additional resources will be necessary in this area.

Indeed, a GAL must be appointed in each ACT case unless a guardian has already been appointed for the subject, but the current pool of people who are willing to accept GAL appointments in ACT cases is extraordinarily limited. This is a difficult situation now that will become dire if there is a significant increase in the number of ACT cases that are filed. One approach that would assist is additional funding to compensate GALs who serve in ACT cases. The Judiciary's budget requests this year (HB 382) include a request for funding to continue funding for GALs who serve in Chapter 587A child abuse and neglect cases at the current level. Additional funding--that does not supplant other aspects of the Judiciary's budget--may be necessary to compensate GALs who serve in ACT cases, as well. Moreover, Family Court may



House Bill No. 1156, H.D.2, Relating to Health
Senate Committee on Health and Human Services
Wednesday, March 22, 2023 at 1:01 p.m.
Page 5

require additional resources, potentially including judge positions, to expeditiously address an increased workload.

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



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

TO: Honorable Sen. Joy A. San Buenaventura
Chair, Senate Committee on Health and Human Services

Honorable Sen. Henry J.C. Aquino
Vice Chair, Senate Committee on Health and Human Services

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

RE: HB1156 HD2 – RELATING TO HEALTH

HEARING: March 22, 2023 at 1:01 pm.

POSITION: IHS supports HB 1156 HD2

IHS, The Institute for Human Services, is in full support of the language to clarify that the use of long-acting injectable antipsychotics for those person brought to an emergency room in a psychiatric crisis requiring psychiatric stabilization may be appropriate and allowable in those instances when persons are chronically mentally ill and homeless and when providers determine that administration of such medications can be done safely and is appropriate for presenting symptoms and diagnosis.

Upon review of testimony from the Department of Health Adult Mental Health Division, we concur on the challenges that present for a timely petitioning process for Order to Treat or for Assisted Community Order for persons presenting in hospital emergency departments (ED) and would likely be challenged on basis of constitutionality due to insufficient due process. That said, finding ways to bring the office of the Attorney General in to support hospital and community providers in the petitioning process for orders to treat and assisted community treatment orders would be tremendously helpful in expediting access to needed psychiatric treatment for persons disabled by their mental illness or substance use disorder.

The burden should fall to the clinical team that has examined the individual, to provide an affidavit establishing diagnosis and appropriate treatment plan for the subject to petition for the order to treat or assisted community treatment order with the legal assistance of the Attorney General's office if no private resources are readily available. To expedite this process, we suggest that perhaps a Judge could be on call daily to receive such emergency requests for emergency orders to treat or emergency assisted community treatment petitions lasting up to 60 days to support initiation of needed treatment while the usual process of petitioning is pursued.

References to the accommodation of online hearings made possible are greatly appreciated for many of our staff who can ill afford absence from their team to travel to Family Court in Kapolei for hearings.

Thank you for the opportunity to testify.

HB-1156-HD-2

Submitted on: 3/17/2023 7:05:16 PM

Testimony for HHS on 3/22/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Oppose	In Person

Comments:

This bill merges the former HB 1555 into this measure as a separate Part Two. As to that, we think it may be a good idea. Clearly a lot of families are not sure how to navigate the legal system and so having the Director of Health (or the AG) file the petition may indeed help. The Department of Health can certainly be a good resource to educate and train people on how the ACT process works and what needs to be done.

However, we are strongly opposed to Part One of the bill and do not believe it complies with applicable case law or constitutional standards. Specifically, we are very concerned about the expanded use of administrative panels to decide whether the individual should be involuntarily medicated.

Current law at 334-162 HRS authorizes these panels in the specific case of someone who is at the State Hospital. It was intended to address specific situations where doctors at the State Hospital felt the need to treat residents and they argued that the judicial process was lengthy. Interestingly, at the time the law was passed, the Department of Public Safety opted not to seek that change in the law for prison inmates and they still utilize the Courts. However, the bill proposes to expand it to a scenario where someone is brought in on a 48 hour hold. It has no place in that context. For one thing, unless a court were to order a longer hold there is simply no time to do it. Even the administrative panels they use at the State Hospital have a built in " due process" component that takes time. There is just no way it can be done that fast. It is impossible.

Aside from the practical challenges, there are huge legal and constitutional implications. To begin with, the individual has not been found otherwise to meet the criteria for longer confinement. The criteria for bringing someone to a hospital on an MH1 or MH2 seems to be a relatively lower threshold and the determination is made by a Police Department psychologist who receives a telephone call from an Officer so to go from there to a point where the individual is being involuntarily medicated with a long lasting medication is a major leap. Our understanding is that Hawaii case law sets forth the judicial procedure which needs to be followed to involuntarily medicate an individual and it is not the process set forth in this bill. It certainly does not involve substituting the judgment of an administrative panel for the Courts.

We do note that this Committee heard SB 916, the companion measure, and it was deferred because the Committee deemed it “ problematic”. At that hearing, the Public Defender also raised the same issues in testifying in opposition to SB 916. We would hope that the Committee would find this bill equally problematic.

Currently, hospitals release these individuals deemed "stable". We share the concern about the revolving door and we understand the frustration that some of our colleagues in the advocacy field are expressing. While we believe that this bill violates the law, we are certainly open to being part of an ongoing discussion to explore ways in which that situation can be remedied.



Committee: Senate Committee on Health and Human Services
Hearing Date/Time: Wednesday, March 22, 2023, 1:01 P.M.
Place: Via videoconference
Conference Room 225
State Capitol
415 South Beretania Street
Honolulu, HI 96813
Re: Testimony of the ACLU of Hawai'i in Opposition of H.B. 1156 H.D. 2 relating to Health

Dear Chair San Buenaventura, Vice Chair Aquino and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in opposition of **H.B. 1156 H.D. 2** which authorizes the State to involuntarily treat individuals with long-acting psychotropic medication under the guise of emergency examination or hospitalization. It further violates a person's constitutional protections by amending existing provisions specific to administration of treatment over an individual's objection.

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 exist¹—may the State intervene and force an individual to take psychotropic drugs or otherwise undergo medical psychiatric treatment over the patient's objection.² 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.

Too often people with mental health conditions are stripped of virtually all of their civil rights and liberties. We need robust systems 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.

¹ The Hawaii Supreme Court has established a three-part test for considering a request to involuntarily treat an individual

² 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).

Chair San Buenaventura and Members of the Committee on Health and Human Services

March 22, 2023, 1:01 P.M.

Page 2 of 2

H.B. 1156 H.D. 2 would allow an otherwise functioning person who is experiencing a mental health crisis to be committed against their will. The ACLU of Hawai‘i has great concern that passing this bill into law raises the possibility of misuse by family members 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**. 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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TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF HB1156, HD2

I write in strong support of HB1156, HD2 with a request for one amendment to conform section 334-59(d) to language in other sections in the bill (described below).

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.

This bill 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.

This bill 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, this bill 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.

- This bill 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, this bill 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, this bill 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, this bill 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 a separate order to treat is obtained.

I request an amendment to conform the language in section 334-59(d) to that found in 334-59(b), so that all references to seeking an order to treat may be made to the director, who shall review and act on such requests expeditiously. This can be done by inserting the boldfaced language below into the proposed amended language in section 59(d) to say:

The facility or hospital where the patient is held may ***request the director to file a petition for*** an order to treat pursuant to section 334-162, to provide such treatment as is indicated by good medical practice, which may include long-acting psychotropic medication. ***The facility or hospital shall provide supporting information. The director shall review such request expeditiously and if the request appears to satisfy the four factors in section 334-161, the director shall file and pursue a petition to request order for treatment over the patient's objection as soon as possible by convening an administrative panel pursuant to section 334-162.***

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, March 20, 2023

HB-1156-HD-2

Submitted on: 3/21/2023 1:30:03 PM

Testimony for HHS on 3/22/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Mary Pat Waterhouse	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. If this was available years ago my relatives would have not have experienced the ramifications of serious mental health. One got beaten up and both tried to commit suicide. The long acting medication enables the person to be themselves and not the illness.

HB-1156-HD-2

Submitted on: 3/20/2023 9:29:29 PM

Testimony for HHS on 3/22/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	In Person

Comments:

I am submitting testimony in Strong Opposition to HB1156 H.D.2.

This bill specifies the use of “long -acting psychotropic medication” in a setting where a patient is present for emergency purposes only. This specific type of medication will extend the treatment time beyond that period which is allowed for emergency purposes. Please see the testimony of the Office Of The Public Defender in regards to their opposition to SB916 which has similar language.

The language in this bill calling for the expanded use of an Administrative Panel is inappropriate and orders for treatment over objection requested by any individual or entity must go through the court process. Instead of trying to bypass the court process, petitioners should reach out to the courts and ask for a more defined/streamlined process.

This bill would also allow for online court hearings of Assisted Community Treatment Petitions. The protections for those who are the subject of ACT petitions has already been jeopardized by the lack of legal assistance or public defender for the subject of the petition. That the hearing could possibly be held over video without the individual having access to legal advice seems like a clear barrier to a clean legal process for forced treatment.

This bill also allows for the bypass of any evidentiary hearing base on the “stipulation” of the subject of the petition. As the judiciary points out in prior testimony, the petitions are based on the supposed decisional incapacity of the subject or patient so how can this same individual knowingly “stipulate” to a proposed order? The potential liability for abuse or mistake here seems enormous. Again, the subject of the petition is not provided with legal assistance in these situations which is a decision that the state/legislature should reconsider due to the increased potential for mistake or abuse.

Finally, it is clear that staffing and housing is an issue for those who provide services to many of those who would be subject to the proposals in this bill. Unfortunately, we are not ready to provide the trained staff, services, and housing that is required when expanding the numbers of individuals that are subject to orders addressed in this bill.

For all of these reasons, I am in strong opposition to HB1156 H.D.2



THE QUEEN'S HEALTH SYSTEM

To: The Honorable Joy San Buenaventura, Chair
The Honorable Henry Aquino, Vice Chair
Members, Senate Committee on Health & Human Services

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 22, 2023

Re: Comments on HB 1156 HD2: Relating to Health

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 with concerns on HB 1156 HD2, which in-part authorizes long-acting psychotropic medication to be provided to patients who are subject to emergency examination or hospitalization, expands the administration of treatment over a patient's objection to include persons in director of health custody at any hospital, subject to an emergency examination, subject of an application for involuntary hospitalization, and subject to a court order regarding fitness to proceed for a criminal trial. The bill also requires orders for treatment over objection proceedings to be expedited and expands who may file a petition for an order to treat over objection under certain circumstances. Our comments primarily concern Part I of the measure.

Queen's commends the Committee for taking a thoughtful approach to statutorily enabling timely and necessary care for individuals requiring emergency hospitalization (HRS 334-59 (d)); we share and appreciate your commitment to addressing the needs of those suffering from serious mental health and substance abuse in our community. While the changes proposed herein allow for more timely and medically appropriate administration of long-acting psychotropic medication we would ask the Committee to consider setting clear timeframes within which requests must be acted upon by the Director of Health. Clarity will assist hospital and/or other facilities to determine when they can file a petition should the Director not act expeditiously.

Thank you for the opportunity to testify on this measure.

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.