



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 20, 2024

TESTIMONY TO THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

House Bill 2159 HD2 – Relating to Mental Health

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

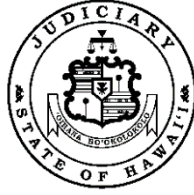
This bill requires the Department of the Attorney General to assist with the preparation and filing of petitions for assisted community treatment and with the presentation of the case, unless declined by the petitioner. Repeals language entitling the subject of a petition for assisted community treatment to legal representation by a public defender. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. 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



The Judiciary, State of Hawai'i

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

Senate Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice-Chair

Wednesday, March 20, 2024, 1:01 P.M.
Conference Room 225 & Videoconference

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

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.

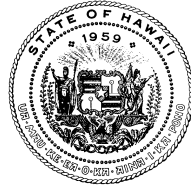
As noted, the Judiciary strongly supports the provisions outlined in Sections 8 – 10 of the measure as these amendments were supported by the Judiciary last session when they were a part of the larger House Bill No. (HB) 1442, HD2, SD1, which went to conference committee and was carried over to this 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.

The Judiciary also 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 a 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.

In addition, the Judiciary respectfully requests the effective date be changed to take effect upon approval, as set forth in the original version of the bill.

Thank you for the opportunity to testify on this measure.

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



KATHERINE AUMER, PhD
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
SUPPORTING HB 2159 HD2
RELATING TO MENTAL HEALTH

March 20, 2024 at 1:01 p.m. in CR 225 and via Video

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1st VICE CHAIRPERSON

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IMMEDIATE PAST

CHAIRPERSON:

Richard I. Ries PsyD, MSEd

EX-OFFICIO:

Marian Tsuji, Deputy Director
Behavioral Health Administration

WEBSITE:

scmh.hawaii.gov

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doh.scmhchairperson@
doh.hawaii.gov

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

Hawai'i law, HRS §334-10, established 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 majority of the State Council on Mental Health members supports HB1830 HD2. The bill has several components that will help the mentally ill.

Part I requires the attorney general to assist in the filing and presentation of an assisted community treatment (ACT) case for a petitioner. This is critical because many families and organizations who are requesting ACT for a loved one and/or a homeless individual don't have the legal expertise and/or the financial means to file the paperwork and present the case before a judge.

Part II repeals language entitling the subject of a petition for assisted community to a public defender for consistency and uniformity. The public

defender testified that they support this change as this is consistent with the mandates of the Office of the Public Defender in providing legal representation for those whose liberty interests are at risk. Assisted community treatment does not fall under those parameters.

Under existing law people subject to a petition for ACT may request an attorney. However, these individuals usually do not, most probably because they suffer from severe mental illness and are not aware they have the right to request legal representation.

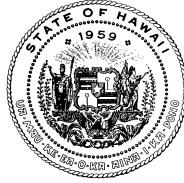
The Senate Judiciary committee, in their SB 2557 SD1 committee report and in the amendment, suggests a different approach to having a public defender for a person subject to ACT. That, for community organizations or dedicated attorneys to provide representation and have the family court appoint the attorney for the subject if the interests of justice require one be appointed. SB 2557 SD1 amended HRS334-126 (f) to add "The court may appoint an attorney for the subject if the court determines that the interests of justice require one be appointed."

Due to the public defender's position, individuals with severe mental illness ability to decide about an attorney and there are those individuals subject to ACT which may need legal representation, we concur with the Senate Judiciary Committee's recommended change to the law found in SB2557 and SD1.

Part III inserts language to provide a mechanism for the automatic screening of certain nonviolent petty misdemeanor defendants for involuntary hospitalization or ACT. If an individual is not meant for the criminal justice system but would be better served in the mental health system, then we need to do that. In addition, costs of providing ACT treatment and the related support are far less expensive than the criminal justice system.

Part IV inserts language that authorizes the courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation rather than simply revoking their probation. This will provide the community and courts with a 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 illness rather than merely revoking their probation. The person has a higher chance of obtaining the correct help if they are mentally ill.

Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

WRITTEN
TESTIMONY ONLY

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

LATE

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

Wednesday, March 20, 2024, 1:01 p.m. in Room 225 and Via Videoconference

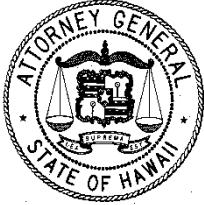
- 1 **Fiscal Implications:** Undetermined.
- 2 **Department Position:** The Department supports this measure and offers comments.
- 3 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
- 4 testimony on behalf of the Department.
- 5 The Department supports the intent of this measure and concurs that assisted
- 6 community treatment (ACT) orders provide a potentially highly effective means to improve
- 7 treatment adherence and achieve significantly better health outcomes for individuals suffering
- 8 from serious mental illnesses. Furthermore, the Department supports efforts to assist mental
- 9 health clinicians preparing and filing of any petition brought pursuant to the Hawaii Revised
- 10 Statutes, and with the presentation of this petition at any related court proceedings.
- 11 Currently, most petitions have been done by community providers contracted by either
- 12 the Department of Health or the Department of Human Services. This should remain the case
- 13 given the long-term longitudinal relationships that they have with the clients under their care.
- 14 The Department supports ACT orders as being a potentially valuable component for
- 15 individuals being treated successfully in the community; however, any opinions on legal

1 processes contained in this bill are deferred to the Department of the Attorney General or
2 other appropriate legal experts.

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

6 **Offered Amendments:** None.

7 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:

SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Wednesday, March 20, 2024 **TIME:** 1:01 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

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

Chair San Buenaventura 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

in the House 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 made by the House Committee on Health & Homelessness in the H.D. 1 of this bill (which are still present in the H.D. 2) 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 in the House.

To address this issue, the Department recommends that sections 9 and 11 be removed. As this bill has crossed over into the Senate, removal of these sections is the clearest way to prevent any constitutional infirmities.

The Department respectfully requests that the Committee consider these recommendations.

Thank you for the opportunity to testify.



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: HB2159 HD2 - Relating to Mental Health

HEARING: Wednesday, March 20, 2024, at 1:01 PM

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 (ACT) 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 the appointment of a public defender to represent an individual 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 the 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 also strongly support 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. If these assessments can be completed and made available to community case managers, we could likely be stabilizing many more people with untreated mental illness and getting them off the street and into housing.

Mahalo for the opportunity to testify.



HB2159 HD2 Funds for Youth Mental Health
COMMITTEE ON HEALTH AND HUMAN
SERVICES

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Wednesday, Mar 20, 2024: 1:01 : Room 225

Hawaii Substance Abuse Coalition Supports HB2159 HD2:

ALOHA CHAIRS, VICE CHAIRS, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery-oriented services.

HSAC supports that defendants charged with petty misdemeanors not involving violence can be subject to criminal justice diversion programs such that following appropriate assessments, the defendant can be committed to a hospital or outpatient facility for more assessments and treatment.

Such defendants can fare much better in treatment than in jail.

As for the rights of defendants to not have legal support from public defenders after determining fitness to proceed, HSAC defers to legal experts.

We appreciate the opportunity to provide testimony.



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

March 20, 2024 1:01 P.M Conf Rm 225 & via Video conference

Testimony in Support on HB2159 HD2 RELATING TO MENTAL HEALTH

The Hawai'i Psychological Association (HPA) supports HB2159 HD2; which ultimately facilitates assisted community treatment (ACT) and mental health treatment for defendants navigating the criminal justice system.

Mental Illness Should Not be Criminalized

There is a disproportionate number of individuals with severe mental health conditions who are incarcerated - Up to a 1/3 of those incarcerated have serious mental illness.

People with mental illness are 10x more likely to be incarcerated than they are to be hospitalized. The justice system is often the de facto entry point for individuals with mental health disorders, substance use disorders, or both.

Diversion programs reduce recidivism. People who participate in diversion programs are less likely to re-offend than those who are incarcerated. This is because diversion programs help people address the underlying causes of their criminal behavior, which reduces the risk of future offending.

Diversion programs promote public safety. By reducing recidivism, diversion programs help to make our communities safer. People who are receiving treatment are less likely to engage in criminal behavior, which benefits everyone.

Intervention should go beyond determinations of Imminent Danger to self or others.

Behaviors induced by conditions like psychosis, paranoia, mania, dementia or substance intoxication need to be diverted and not just those with suicidal or homicidal ideation. Current crisis intervention approaches only allow diversion in cases where there is imminent danger to

self or others occurs. There are many scenarios with people who are not imminently dangerous, but who are in severe crisis due to their condition, and need immediate crisis evaluation and treatment. Otherwise, they will not receive treatment and are released back into the community. These individuals' underlying conditions and behaviors will continue to go untreated, and they will likely reoffend (often for petty offenses). The cycle will continue.

Often the crisis is the doorway into services for individuals with severe conditions. Given the barriers and challenges existing to enter into the mental health system, we need to be able to identify and redirect them immediately rather than repeatedly going through the criminal justice system.

The crisis centers can provide much needed access to care

Diversion programs provide much-needed treatment. Incarceration does not address the underlying mental health or substance use issues that contribute to criminal behavior. Diversion programs offer a path to treatment and recovery, which can help people get their lives back on track.

Diversion programs are more cost-effective than incarceration.

In the long run, it is less expensive to invest in diversion programs than it is to incarcerate people with mental health or substance use disorders.

Comment on a Coordinated Legislative Approach to Criminal Justice and Mental Health

A coordinated, comprehensive and integrated behavioral health system is desperately needed to achieve the appropriate diversion of individuals with mental health disorders and substance use disorders to proper and effective care. Many bills this session target the intersection of mental illness and criminal justice, but focus on just one component. In order to have a comprehensive systemic approach, our legislation should also be comprehensive and systematic.

This bill (HB2159) gets help to people early when first interfacing and navigating the criminal justice system. Others (SB3139 and HB1831) create crisis and diversion program to address initial crises. Without a crisis center to divert individuals to and a program to oversee and monitor, it will not work. Without properly trained officers to get them there, it will not work. We also need specially trained and designated law enforcement officers to identify and divert those with mental illness to the crisis center (SB2345); the brick and mortar crisis center itself (HB1831); the Assisted Community Treatment (ACT) program that will manage and monitor the process and put the systems in place to identify those in the legal system that are in need of treatment (SB3141); and the handling of involuntary hospitalizations and authorization for screenings for ACT (HB2159).

Each of these measures needs adequate funding to make it all happen, which overall is a cost savings for the government and the public. There will be a marked reduction in recidivism, which also benefits overall public safety and quality of life for all.

As for individuals, these measures – with adequate and appropriately targeted funding – will provide services that actually helps.

Thank you for the opportunity to provide input into this important bill.

Sincerely,



Raymond A Folen, Ph.D., ABPP.
Executive Director

REFERENCES

Fader, T. & Kelly E. (2020). *Just and well: Rethinking how states approach competency to stand trial*. The Council of State Governments Justice Center. <https://csgjusticecenter.org/wp-content/uploads/2020/10/Just-and-Well27OCT2020.pdf>

National Center for State Courts. (2022). *National Diversion Landscape: Continuum of Behavioral Health Diversions Survey Report*. National Judicial Task Force to Examine State Courts' Response to Mental Illness. https://www.ncsc.org/_data/assets/pdf_file/0022/77143/National-Diversion-Landscape.pdf

National Center for State Courts. (2023). *State Courts Leading Change: Report and Recommendations*. National Judicial Task Force to Examine State Courts' Response to Mental Illness. https://www.ncsc.org/_data/assets/pdf_file/0031/84469/MHTF_State_Courts_Leading_Change.pdf

HB-2159-HD-2

Submitted on: 3/15/2024 7:13:02 PM

Testimony for HHS on 3/20/2024 1:01:00 PM

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

Comments:

While the bill does contain some provisions that will facilitate treatment, we have concerns that it may raise 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. We also 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.



Committee: Health and Human Services
Hearing Date/Time: Wednesday, March 20, 2024, at 1:01 pm
Place: Conference Room 202 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in OPPOSITION to Part II of H.B. 2159, H.D. 2 Relating to Mental Health**

Dear Chair San Buenaventura, Vice Chair Aquino, 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."***

At that time, the Office of the Public Defender also weighed in on this matter, and 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.”

We respect the Public Defender’s legal interpretation of the Hawai’i Constitution as it relates to their mandate to represent indigent defendants “threatened by confinement or imprisonment.” However, **we also agree with the prior Department of Attorney General’s 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>

Several proponents for removing Part II affording legal representation have argued that legal counsel is unnecessary because indigent individuals subject to ACT petitions are afforded Guardian Ad Litem (GALS) in the Family Court proceedings. 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 discriminatory on its face, and constitutionally suspect.

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>

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.

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.

- 1. New York's Section 9.60 Assisted outpatient treatment Mental Hygiene (MHY) CHAPTER 27, TITLE B, ARTICLE 9 Law, also known as Kendra's Law, affords the right to counsel.**

§ 9.60 Assisted outpatient treatment.

(g) Right to counsel. The subject of the petition shall have the right to be represented by the mental hygiene legal service, or privately financed counsel, at all stages of a proceeding commenced under this section.⁵

- 2. California's AB-1976 Mental health services: assisted outpatient treatment.(2019-2020), Assembly Bill No. 1976, CHAPTER 140, also known as Laura's Law, affords the right to counsel.⁶**

(4) The petition shall state all of the following:

(A) Each of the criteria for assisted outpatient treatment as set forth in subdivision (a).

(B) Facts that support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and that person's counsel.

(C) That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

(D) That the person who is the subject of the petition has the right to be represented by counsel in all stages of the proceeding under the petition, in accordance with subdivision (c).⁷

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>

⁵ <https://www.nysenate.gov/legislation/laws/MHY/9.60>

⁶ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1976; see also

⁷ In California, Public Defenders represent defendants in criminal cases, as well as individuals subject to conservatorship and Assisted Outpatient Treatment proceedings in civil court.

<https://pubdef.lacounty.gov/mental-health-court-branch/>

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 court appointed counsel through all stages of the proceeding under the petition 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 a public defender.

Other Concerns

- We agree with the comments 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.
- According to a Pew Report in 2019, Hawai'i has the longest average length of probation within the United States, with an average length of six years. Revoking individuals on probation supervision for failing to comply with treatment alone contravenes best practices and evidence based 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.

HB-2159-HD-2

Submitted on: 3/16/2024 3:10:11 PM

Testimony for HHS on 3/20/2024 1:01:00 PM

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 Hawai‘i 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, Hawai‘i

HB-2159-HD-2

Submitted on: 3/18/2024 2:01:55 PM

Testimony for HHS on 3/20/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Marsha Hee	Individual	Support	Written Testimony Only

Comments:

Aloha, My name is Marsha Hee. I support HB2159 HD2 as an effective and necessary step towards providing for assisted community treatment services to address our state's underserved mental health community members. I am a family member of a loved one who lives with mental health conditions. Thank you for taking my perspective and opinion into consideration to support and pass HB 2159 HD2.

Sincerely,

Marsha Hee, Volcano HI 96785, life-long resident/citizen of Hawaii

Family member of loved one with serious mental health conditions .

LATE

TO: **COMMITTEE ON HEALTH AND HUMAN SERVICES**
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

FROM : **Dr. Charlotte Savage - Clinical Psychologist - 354 Uluniu St. #412, Kailua, HI 96734**
(808)376-2922

RE: HB2159 HD2 Relating to Mental Health. – Hearing Wednesday, March 20, 2024- **SUPPORT**

Aloha and thank you for all the work you do.

My name is Charlotte Savage, I am a clinical psychologist currently in private practice but spent my career working in emergency rooms, psychiatric hospitals, a detention center, and the VA substance abuse treatment program. I have worked regularly with law enforcement and court officials and worked in diversion programs both in California and Texas and seen their effectiveness.

I support robust, and comprehensive diversion programming in order to address the complicated nature of severe mental illness, substance use disorders, and dementia that often lead to encounters with the justice system. **This bill, along with the other diversion related bills currently in process, are all critical in better helping our residents get the treatment they need.**

This bill is in alignment with the recent report by the National Judicial Task Force to Examine State Courts' Response to Mental Illness that highlighted the need for improved collaboration between courts and behavioral health systems. The ACT program is critical in facilitating this coordination, and an important piece of an effective diversion system.

Looking at the opponents concerns about this bill, *it seems that in their focus on protecting due process rights and rights to self-determination, the right to access care may be violated in doing so.*

Per the written testimonies of attorneys Christopher Thomas and Ellen Godbey Carson, who have extensive experience on the impact of patient's receiving services through ACT, they both indicate that removing the mandatory public defender is not a violation of rights but instead actually *removes* unnecessary hurdles & removes unnecessary delays to treatment. They state there is adequate due process via the statute, a trial judge & a guardian ad litem.

Early intervention is critical. Delaying treatment can adversely affect the individual, their loved ones and the public. Extended delays in jails and holding cells, and remaining untreated, often exacerbate their condition, lead to hostile interactions with staff and inmates, injuries, and can even add PTSD as an additional condition these individuals now have to face besides their original condition.

Psychiatrists, like psychologists, are required to adhere to their code of ethics that requires respect for patients' rights to self determination. This is a typical and important part of the treatment process and something we consider in our work everyday. Patients often have ambivalence about medication and treatment is part of what we address in the typical course of treatment, esp with severe mental illness.

As such, I support this bill, as is, and its intent to effectively divert patients in the legal system and direct them to the treatment they need, and not delay or prevent their treatment. It is important we do what is known to help alleviate the suffering that these untreated conditions cause.

Aloha and Thank you for your consideration,

Charlotte Savage, PsyD.

Reference:

National Center for State Courts. (2023). *State Courts Leading Change: Report and Recommendations*.
National Judicial Task Force to Examine State Courts' Response to Mental Illness. [https://
www.ncsc.org/_data/assets/pdf_file/0031/84469/MHTF_State_Courts_Leading_Change.pdf](https://www.ncsc.org/_data/assets/pdf_file/0031/84469/MHTF_State_Courts_Leading_Change.pdf)

Dear Members of the Committee on Health & Homelessness,

My name is Angelina and I am a graduate student at one of the local universities located on Oahu. I am writing in opposition of HB2159. It is to my understanding that this bill's target population are those who have committed a petty misdemeanor crime in the community. With this bill, there is opportunity for individuals to receive outpatient services through the community or be involuntarily hospitalized for a certain amount of time. Both are dependent on what the clinical team deems necessary. Though the actions of this bill would most likely be seen in the court, it does seem similar to the MH1 referrals which would take the person to the emergency room without their consent as they are either a danger to themselves or others. I would argue that it was somewhat difficult to grasp what population this policy would be meant for. As examples, would this apply for first time offenders or repeat offenders? In addition, as this is a bill stemming from this specific committee, would it mostly apply to houseless individuals who participate in petty crimes? Though I recognize a person must meet certain criteria, I find it difficult to believe that an individual who may have been withholding illicit substances could be hospitalized involuntarily rather than receive mandated treatment. I think it heavily depends on the person's history and the present circumstances in order to figure out what the appropriate course of action should be. I can understand in certain cases, for example, if the person has a mental health diagnosis and engages heavily in petty crimes, *then* maybe the first direction is to stabilize them in the hospital and then refer them out to community groups to address their behavior. One aspect I did like to see included was the assistance from the attorney general's office in helping individuals find placement at the treatment facilities/groups. Overall, I think there should be a more altruistic way to facilitate this change in behavior with those participating in these crimes instead of keeping individuals hospitalized if mentally they are sound and well.

Maybe, there is an opportunity to collaborate with community organizations for treatment as an intervention *before* admitting someone to the hospital without their consent.

LATE

HB-2159-HD-2

Submitted on: 3/20/2024 4:12:25 AM

Testimony for HHS on 3/20/2024 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

I am submitting testimony in strong OPPOSITION to this bill.

The State has previously used their power to unilaterally strip an individual's Right To Legal Counsel from those targeted by ACT (Assisted Community Treatment) Petitions. Now the State would like to use that same power through this bill to mandate that the Attorney General's Office step in as counsel for the Petitioner. This is a violation of an individual's most basic right and speaks volumes when other states are able to provide treatment orders while still providing free legal counsel to those affected.

As the Attorney General of the State Of Hawai'i wrote/ warned in their 2/9/2021 testimony to the State Legislature on then bill SB199 (Relating To Assisted Community Treatment):

"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."

The right to free legal counsel for the targeted individual must be restored in all ACT Petition (Outpatient Commitment) proceedings.

The bill also targets mentally ill individuals charged with misdemeanors. Just last month, this Legislature held a hearing where the administrator of the State Hospital informed you that it is overcrowded and there are many individuals being held there when it was not medically necessary but because there is a severe backlog in psychiatric evaluations.

<https://www.hawaiinewsnow.com/2024/02/06/state-psychiatric-hospital-overcrowded-with-patients-who-dont-have-medical-needs/>

Now the State Legislature proposes this bill which specifically targets disabled/mentally ill individuals who are charged with misdemeanors. This bill will funnel disabled/mentally ill individuals to an already severely backlogged and broken psychiatric evaluation system where

they are at real risk of being detained/incarcerated/hospitalized much longer than other non-disabled individuals charged with the same exact misdemeanor. In addition, this bill will funnel these same disabled/mentally ill individuals to the Assisted Community Treatment/Outpatient Commitment hearing process where the State has already stripped the disabled/mentally ill individual's right to legal counsel.

The Legislature/State needs to start over and refrain from further violating the rights of disabled individuals.