



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1322, S.D. 1, RELATING TO MENTAL HEALTH.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 26, 2025 **TIME:** 9:40 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Ian T. Tsuda,
Deputy Attorney General, at (808) 693-7081)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments.

This bill (1) clarifies and expands on the emergency procedures used when responding to individuals suffering from mental illness or substance abuse, (2) eliminates the authority of health care providers to initiate emergency transportation for individuals suffering from mental illness or substance abuse, (3) establishes limits on liability for professionals responding to mental health emergencies, (4) expands the notice requirements during emergency hospitalization to include a healthcare surrogate and allow for waiver of notice, (5) repeals section 334-60.5(k), Hawaii Revised Statutes (HRS), which allowed the family court to appoint a legal guardian for an individual during a proceeding for involuntary hospitalization, (6) amends section 334-60.7, HRS, to remove the requirement that psychiatric facilities await responses from interested parties to a notice of intent to discharge from involuntary hospitalization before it may discharge a patient, (7) clarifies the circumstances under which the subject of an order for assisted community treatment (ACT) can be administered medication over the subject's objection, (8) provides limits on liability for ACT providers, (9) amends sections 334-161 and 334-162, HRS, to allow a single psychiatrist decision-maker to provide administrative authorization for the administration of treatment to a patient in the

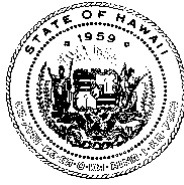
custody of the Director of Health over the patient's objection, and (10) provides various technical, non-substantive amendments to several sections under chapter 334, HRS, for clarity and consistency.

This bill provides a comprehensive reexamination of Hawaii's mental health laws to clarify and streamline existing procedures and strengthen the legal framework for supporting individuals suffering from mental illness or substance abuse. Given the increasing number of individuals in Hawai'i impacted by these challenges, establishing a clear and effective mental health system has become an urgent priority. Achieving this goal requires a systematic review and refinement of the intricate laws outlined in chapter 334, HRS. By addressing these issues, this bill provides a workable framework to guide ongoing improvements to our mental health system. Importantly, the amendments in this bill provide clear guidance to professionals treating these individuals in need and bolster the tools available to respond and treat individuals experiencing mental health crises.

The Department recommends restoring the provision from the original draft of Senate Bill No. 1322 that authorized health care providers who perform an examination to initiate emergency transportation for dangerous individuals who are suffering from mental illness or substance abuse. This provision is based on one that was first enacted in 1977 under section 3 of Act 76, Session Laws of Hawaii, and is currently codified in section 334-59(a)(3), HRS. However, it has not been substantially utilized as there exists confusion over how to accomplish an emergency transport under the current terms of the statute. The proposed amendments aim to bridge this gap in understanding by authorizing law enforcement to assist the health care providers in the emergency transportation process and ensuring the reasons necessitating emergency transportation are documented by the health care provider. The Department believes these amendments will make this process a more viable tool for health care providers treating individuals in crisis, the deletion of which will remove a pathway for transporting individuals in need of care to an emergency examination. Therefore, we respectfully request the following provision be restored and inserted directly after page 7, line 19, with the following sections to be appropriately renumbered:

§334-D Emergency transportation initiated by a health care provider. Any licensed physician, advanced practice registered nurse, physician assistant, licensed clinical social worker, or psychologist who has examined an individual and determines that the individual is mentally ill or suffering from substance abuse and is imminently dangerous to self or others, may direct a law enforcement officer to detain and transport the individual, by ambulance or other suitable means, to a psychiatric facility or other facility designated by the director for an emergency examination, and may administer treatment, within the examining health care provider's scope of practice, as necessary for the individual's safe transportation. The examining health care provider shall provide a written statement of circumstances and reasons necessitating the emergency examination. The written statement shall be transmitted with the individual to the psychiatric facility or other facility designated by the director and be made a part of the individual's clinical record.

The Department respectfully asks the Committee to pass this bill with the above amendments. Thank you for the opportunity to provide testimony.



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

**Testimony in SUPPORT of SB1322 SD1
RELATING TO MENTAL HEALTH**

SENATOR KARL RHOADS, CHAIR
SENATOR MIKE GABBARD, VICE CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date and Time: February 26, 2025, 9:40 a.m. Location: Room 016 and Video

1 **Fiscal Implications:** None

2 **Department Position:** The Department of Health ("Department") supports this measure.

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

5 SB 1322 SD1 seeks to clarify, update, and revise Hawaii's mental health laws in an effort
6 to help and support individuals with mental illness or substance use. The proposed
7 modifications to Chapter 334 in SB 1322 SD1 modify the following: procedures available for
8 emergency transportation, examination, and hospitalization; limitations on liability for state
9 and local governments and professionals during mental health emergency procedures; notice
10 and waiver requirements for emergency hospitalization; the authority of the family court to
11 appoint a legal guardian in a proceeding for involuntary hospitalization; the response
12 requirement for psychiatric facilities on a notice of intent to discharge an involuntary
13 hospitalization patient prior to discharge; circumstances under which an order for assisted
14 community treatment would allow medication to be administered over the patient's objection;
15 and limitations on liability for an assisted community treatment provider; and panel
16 requirements for Harper hearings.

1 The Department acknowledges that the previous version of the measure included the
2 allowance of health care providers to direct involuntary transport of patients and provided
3 immunity to the directing providers. Providing timely access to mental health care through an
4 appropriately trained and preferably established health care provider, especially for homeless
5 individuals with a mental illness, is a priority for the Governor, and the Department supports
6 the Governor's priorities.

7 The Department appreciates the ongoing collaborative effort to improve the system of
8 mental health care in our islands.

9 **Offered Amendments:** None.

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

To: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members, Senate Committee on Judiciary

From: Sondra Leiggi Brandon, Vice-President of Behavioral Health, The Queen's Health Systems.

Jace Mikulanec, Director, Government Relations, The Queen's Health Systems

Date: February 25, 2025

Re: Comments on SB1322 SD1 – Relating to Mental Health

The Queen's Health Systems (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 noting our concerns on SB1322 SD1, which among other things clarifies and expands the circumstances and procedures available for emergency transportation, examination, and hospitalization under Hawaii Revised Statutes chapter 334. We appreciate the introducer's intent in this measure but urge the Committee to fully review the impact of the bill's proposed changes to the existing mental health statute and associated processes as they relate to acute care hospitals.

Queen's Manamana emergency department experiences some of the highest acuity mental and behavioral health patients in our state and, as such, reiterate the critical importance the role mental health emergency workers (MHEW) play in determining appropriate crisis intervention and emergency stabilization care. We urge stakeholders to carefully examine existing crisis intervention services that Queen's and others are employing, in particular with regard to MH1's, to ensure that those experiencing mental health crisis are not reflexively transferred to acute care/emergency department settings which are already operating at consistently high capacities. We wish to underscore that any transport of a person experiencing mental health crisis as referenced within this bill (and impacted statute) be coordinated with an MHEW to determine appropriate setting to which a detained individual be transported.

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.

Queen's appreciates the previous Committee's deletion of language (Page 7, subsection 334-D) that would have allowed emergency transportation to be initiated by a health care provider. The broad authority given to these individuals to initiate an emergency transport to a facility for emergency examination could have unintended consequence for our emergency departments. We urge the Committee to maintain the language reflected in the SD1.

We, however, question the rationale and need of the previous Committee's amendment on Page 5, 334-B(c):

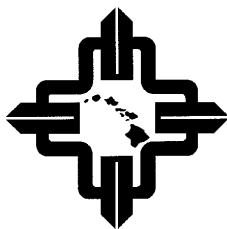
(c) Any individual detained under this section shall be transported directly to a psychiatric facility of other facility designated by the director, as determined by a mental health emergency worker; provided that if a medical emergency occurs during transport the individual shall be transported to the nearest emergency department.

This language is unnecessary; if an individual is experiencing an emergency condition the officer or EMS would already transport the individual to an emergency department. We urge the amended language be removed.

Additionally, we have concerns with language on Page 9, subsection 334-E(b), regarding emergency hospitalization. Current statute directs that a patient's admission not to exceed forty-eight hours; language proposed in this measure would expand to seventy-two hours. This could have the effect of arbitrarily increasing the length of stay for patients brought into the hospital under emergency conditions set forth in this bill. We see no evidence for why this change is needed and would urge that this language to be stricken from the bill.

Finally, we implore this Committee and the Legislature to meaningfully address the underlying conditions impacting our state's stressed mental/behavioral health system. Please be mindful of the impact this bill and others will have with regard to the overall continuum of care; there continues to exist a profound need to invest in residential and community treatment programs, expand mobile crisis teams, incentivize and expand the mental/behavioral health workforce, and invest in the public/private mental health infrastructure generally (including behavioral health crisis centers, etc.) if we are to see meaningful improvements in the quality of care for those most in need.

We thank you for allowing us to share our concerns regarding this measure.



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

February 26, 2025
9:40 AM
Hawaii State Capitol
Room 016 & Via Videoconference

Testimony with Concerns on S.B. 1322, S.D. 1
RELATING TO MENTAL HEALTH

Edward N. Chu
President & Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony **with concerns on S.B. 1322, SD1, Relating to Mental Health**

HHSC's emergency rooms are small, over-filled, and under-staffed. We urge the legislature to recognize that maintaining the functionality of HHSC facilities, especially our emergency rooms (ER), is critically important to the overall support of each rural community served.

The mental health emergency worker (MHEW) contract with The Queen's Health System has been invaluable for critical coordination efforts for limited resources and the professionalism of their staff has been above and beyond. The MHEWs have fulfilled their promises to work closely with our facilities, generally resulting in a flow of identified patients in need of emergency psychiatric care into our ERs that are manageable for staff and, thus, not impacting other necessary patient care in untenable ways. We understand that the incidence of law enforcement not being able to contact the MHEW is minimal, both on Hawaii Island and Oahu. The general sentiment is that the MHEW process is a good system that seems to be working well for the relevant entities, especially as a system of hospital resource management. However, in the abundance of caution, in the very rare occurrence that law enforcement or a crisis intervention officer cannot reach a MHEW, the officer may need to detain the individual in cellblock until the MHEW is coordinated with.

We respectfully ask that we collectively agree that we continue to rely on the MHEWs as this point of coordination, as it is working.

§334-B Emergency transportation initiated by a law enforcement officer. (a) When a law enforcement officer has a reasonable suspicion that an individual is imminently dangerous to self or others and needs to be detained for emergency examination, the law enforcement officer shall contact a mental health emergency worker; provided that the law enforcement officer may temporarily detain the individual at law enforcement facilities, if the law enforcement officer:

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



SB1322 SD1 ER Transportation, Exam and Hospitalization

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Wednesday, Feb 26, 2025: 9:40: Room 016 Videoconference

Hawaii Substance Abuse Coalition Supports SB1322 SD1:

ALOHA CHAIR, VICE CHAIR, 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 Hawaii's laws must evolve so that innovative approaches such as crisis services, transportation, examination and care for people with mental health and substance abuse can access the care they need when they need it and with the most efficient and cost-effective means.

HSAC supports the DOH amendments that have been implemented to allow for a serious medical emergency be transported to hospital care and that a Qualified psychiatric examiner meets certification requirements.

Crisis services often need legal changes related to transportation because current laws can create barriers to getting people the help they need quickly and safely:

1. **Involuntary Transport Limitations** – Hawaii has strict laws about when and how a person in crisis can be transported against their will, often requiring law enforcement involvement. This can escalate situations rather than de-escalating them when trying to access the immediate care the person needs.
2. **Lack of Non-Law Enforcement Options** – In many places, the only available transport for people in mental health crises is through police or EMS. Changing laws could allow for more appropriate crisis transport teams (like trained behavioral health responders) to handle these situations with care.
3. **Insurance and Funding Barriers** – Some laws limit insurance coverage or Medicaid reimbursement for crisis transportation, leaving individuals and crisis response teams without financial support for safe, non-police transport options.

Legal changes in these areas could help crisis response teams provide more effective, humane, and timely transportation and examination for people experiencing mental health and substance abuse crisis.

We appreciate the opportunity to provide testimony and are available for questions.

SB-1322-SD-1

Submitted on: 2/21/2025 6:05:30 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	Written Testimony Only

Comments:

One of the stated purposes is to clarify how an individual subject to an ACT order can be involuntarily and forcibly medicated. We always understood that to be the case. However, this does drive home the point that while ACT may be a beneficial program in some ways in terms of providing treatment, it is also potentially a serious invasion of a person's liberty and as such the proceedings should provide as much due process protections as possible.

There are two provisions we definitely do not like. The bill eliminates liability for basic negligence committed by various entities . There is no basis in law or experience for a provision such as that. There is certainly no reason to lower the standard of care required or provide any safe harbor for negligent actions they commit.

The bill also reduces the number of decision makers who preside at a hearing at an Order to Treat at the Hawaii State Hospital from three to one. The Order to Treat is a very unusual proceeding to begin with. Typically, in order to forcibly medicate an individual in a non emergency situation an order must be obtained from a Judge after a Hearing before a Court. Some years ago the Legislature authorized an Administrative Hearing to be had at the Hawaii State Hospital for persons who were committed there. The Department has never handled this well First, they were supposed to promulgate Administrative Regulations before they could begin the process. They never did. We were promised that there would be stakeholder engagement before rules were promulgated. Needless to say, that never occurred. Instead, they developed internal policy guidelines which were finally shared with us only after repeated requests. We pointed out that there were severe due process deficiencies and to our knowledge while some of those may have been addressed, the process in general is not designed to provide a lot of traditional safeguards.

The current bill reduces the decision to one individual vs the current provision for a "hearing" before a three panel Board. While that may be more convenient for the personnel at the State Hospital it is a further erosion of what meager protections are presently provided. We believe the better approach would be the elimination of the Order To Treat process and a return to the more traditional method of requiring a Judicial proceeding.



SB1322_SD1 ER Transportation, Exam and Hospitalization

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Wednesday, Feb 26, 2025: 9:40: Room 016 Videoconference

Hina Mauka Supports SB1322_SD1:

ALOHA CHAIR, VICE CHAIR, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Brian Baker. I am the Chief Operating Officer for Hina Mauka, a mental health and substance use disorder treatment and prevention agency for thousands of adults and adolescents on Oahu and Kauai, including recovery-oriented services and housing transitional living programs.

Hina Mauka supports that Hawaii's laws must evolve so that innovative approaches such as crisis services, transportation, examination and care for people with mental health and substance abuse can access the care they need when they need it and with the most efficient and cost-effective means.

Hina Mauka supports the DOH amendments that have been implemented to allow for a serious medical emergency be transported to hospital care and that a Qualified psychiatric examiner meets certification requirements.

Crisis services often need legal changes related to transportation because current laws can create barriers to getting people the help they need quickly and safely:

1. **Involuntary Transport Limitations** – Hawaii has strict laws about when and how a person in crisis can be transported against their will, often requiring law enforcement involvement. This can escalate situations rather than de-escalating them when trying to access the immediate care the person needs.
2. **Lack of Non-Law Enforcement Options** – In many places, the only available transport for people in mental health crises is through police or EMS. Changing laws could allow for more appropriate crisis transport teams (like trained behavioral health responders) to handle these situations with care.
3. **Insurance and Funding Barriers** – Some laws limit insurance coverage or Medicaid reimbursement for crisis transportation, leaving individuals and crisis response teams without financial support for safe, non-police transport options.

Legal changes in these areas could help crisis response teams provide more effective, humane, and timely transportation and examination for people experiencing mental health and substance abuse crisis.

We appreciate the opportunity to provide testimony and are available for questions.



820 Millilani Street, Suite 200, Honolulu, HI 96813
www.ohanahealthplan.com

February 26, 2025
9:40 AM
Conference Room 016 & Videoconference

To: The Honorable Chair Karl Rhoads
The Honorable Vice Chair Mike Gabbard
Senate Committee on Judiciary

From: 'Ohana Health Plan
Rachel Wilkinson, Manager, Government Relations, Marketing &
Communications

Re: SB1322 SD1, Relating to Mental Health; **In Support Offering Comments**

'Ohana Health Plan provides government-sponsored managed care services to families—from keiki to kupuna—and individuals with complex medical needs primarily through QUEST (Medicaid), Medicare Advantage and Medicare Prescription Drug Plans across the state. 'Ohana Health Plan is a Centene Corporation company, a leading healthcare enterprise committed to helping people live healthier lives.

'Ohana Health Plan offers our **support** of SB1322 SD1 and offers comments on Section 3, which clarifies the circumstances under which a subject of an order for assisted community treatment can be administered medication over the subject's objection and limits on liability for an assisted community treatment provider.

Since 2013, 'Ohana Health Plan has also served adults diagnosed with a qualifying serious mental illness (SMI) and/or a serious and persistent mental illness (SPMI) through the state's Community Care Services (CCS) program.

Our 'Ohana CCS members are some of Hawaii's most vulnerable individuals who have been diagnosed with schizophrenia, Post Traumatic Stress Disorder, substance induced psychosis, bipolar disorder, and major depression. They have significant impairment in their social or functional behavior, unable to achieve optimal health outcomes without the support of persons to help navigate their care.

The CCS program has additional benefits and resources to help those in our community dealing with behavioral health and substance use disorders, including a specialized intensive case management program for our most severely mentally ill.

An ACT petition is frequently initiated for chronically homeless individuals who are found to be dangerous to themselves or others, are suffering from severe, untreated mental

illness and/or substance use disorder (SUD) and are incapable of making informed decisions about their own care and well-being. Many of these individuals are in the CCS program and we support the use of the ACT petition as a way to provide these individuals with the care that they need. The assistance of the Department of the Attorney General significantly enhances the ability of an individual's treatment team to prepare an effective ACT petition.

However, if 'Ohana were to initiate an ACT petition as the interested party, as a covered entity and a provider, 'Ohana is subject to both federal and state privacy laws. In order to make the initial disclosure of the member's name and information to share Protected Health Information (PHI) with the AG's office, it must be either through a Release of Information or under an exception to the privacy laws. The exception to the privacy laws under this statute are currently untested.

Thank you for the opportunity to submit testimony on this measure.



LATE

Committee: Judiciary
Hearing Date/Time: Wednesday, February 26, 2025, at 9:40am
Place: Conference Room 016 & Via Videoconference
Re: **Testimony of the ACLU of Hawai'i in Opposition to S.B. 1322 S.D.1 Relating to Mental Health**

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The ACLU of Hawai'i supports the intent of S.B. 1322 S.D.1 to help and support individuals experiencing mental illness or substance abuse given the public health crisis in our communities. However, given our mandate to safeguard civil rights and liberties enshrined in our federal and Hawai'i Constitutions, **we strongly oppose S.B. 1322 S.D. 1 Relating to Mental Health as it violates constitutional rights.**

First and foremost, we seek to protect a person's fundamental right to bodily autonomy and to make our own health care decisions. This is the essence of liberty.

Expand Voluntary Community-Based Treatment

While we acknowledge the preamble that individuals experiencing mental illness and/or substance abuse need support, research shows that voluntary treatment is more effective than involuntary treatment. The State must increase investments in more voluntary community based mental health and substance abuse treatment options and supportive housing to the scale required to meet the needs of vulnerable community members.

Constitutional Concerns Relating to the Right of Bodily Autonomy, Due Process, Equal Protection, and Privacy

As drafted, the proposed measure raises constitutional concerns as summarily outlined below:

1. Lack of Guaranteed Legal Representation in ACT Proceedings Violates Due Process Rights

- ACLU of Hawai'i continues to object to the removal of statutory language guaranteeing the right of legal counsel to indigent persons subject to ACT proceedings in Family Court. (Concurrence by the Director of ACLU National's Disability Rights Program that this is a constitutional violation).
- ACLU-HI has objected to past measures that removed the guaranteed right to legal counsel in ACT proceedings in Family Court.

- As you are aware, under the current law, the Family Court now has discretion to appoint legal counsel in ACT proceedings “in the interest of justice.” Unless the Court is appointing legal counsel in all ACT proceedings, we believe that this new proposed statute would continue to violate due process rights of individuals subject to ACT petitions.

2. Termination of Order

- The proposed bill states that the Court can only revoke the order if there is no objection to terminate an ACT order.
- Given the plain language of the proposed statute, it reads as though it is impossible for the family court to terminate an order requiring community assisted treatment, even if the provider is recommending termination, unless all the parties agree.
- The Attorney General office, which would be representing the petitioner at these hearings, should not be allowed to override the recommendation of the provider.
- Where the provider and the petitioner agree that the ACT order should be discontinued, the family court should be required to revoke the order. (I.e., the court should not be able to override a unanimous recommendation of the provider and petitioner.)
- The stated interests or preferences of the petitioner can be entirely disregarded here, unless the petitioner agrees with the provider (and all other parties, as discussed above). **Where the petitioner seeks to terminate or modify an order, there should be a hearing and an opportunity for the petitioner to explain why they no longer meet the criteria for ACT.**
- If there is a disagreement, there should be a hearing and the family court should make findings one way or another with legal counsel on record for the indigent person subject to the ACT order.

3. Involuntary Medical Treatment Panel

- This reduces the number of decision makers for involuntary medical treatment from a panel of 3 clinicians to a single psychiatrist.
- The U.S. Supreme Court has held, “The right of each person to determine his or her medical treatment is one of the most valued liberties in a democratic society.”
- We categorically oppose the reduction in the number of decision makers for involuntary medical treatment from a panel of 3 clinicians to a single

psychiatrist. Given the fact that involuntary medical treatment is so invasive and involves individual personal liberty, it is critically important to have three qualified clinicians to have to agree it's necessary.

4. Immunity from Liability

- Sec. 334-129 (f) "Except in cases of willful misconduct, gross negligence, or recklessness, the assisted community treatment provider shall not be held civilly liable, either personally or in the assisted community treatment provider's official capacity, for the death of or injury to the subject of the order, claim for damage to or loss of property, or other civil liability as the result of any act or omission in the course of the employment or duties under this part."
- This provision is highly suspect and is reminiscent of [Senate Bill 3047](https://www.civilbeat.org/2022/02/state-says-it-shouldnt-be-held-liable-for-pandemic-harm-including-inmate-deaths/) (2022) as highlighted in <https://www.civilbeat.org/2022/02/state-says-it-shouldnt-be-held-liable-for-pandemic-harm-including-inmate-deaths/>. The bill originated in the state Attorney General's Office, and would change state law to prevent the state from being held liable for "any claim arising out of an act or omission that caused or contributed to" a person becoming ill from Covid-19 or its variants. This bill was drafted during the COVID outbreak when COVID rapidly spread in our jails and prisons and several people died.
- The standard of care and liability should not be lowered for community assisted treatment providers. On its face, this suggests a lower standard of care for persons with a record of, or perceived as having a disability, and is discriminatory.

5. Violation of Privacy and Protected Health Information

- We have strong concerns about the proposed new section 334 that requires any existing doctors, therapists, and social workers to furnish information, including treatment records, to the Attorney General if an ACT order is being pursued. This will violate the right to privacy under our Hawai'i Constitution and other protected health information laws.
- Authorizing the state to demand a therapists/clinicians' notes about a person's treatment if someone petitions for ACT for that person is troubling and likely violates privacy interests.

6. Separate ACT Proceeding from Guardianship Proceeding

- We agree that it is preferable to separate the involuntary treatment proceeding from the guardianship proceeding given that guardianships deprive the individual of personal autonomy, often permanently.

- Assisted Community Treatment should not be a back-door way to implement a permanent guardianship. We support the removal of this joint ACT/guardianship proceeding formerly in section 334-60.4(b)(8).

In closing, ACLU of Hawai'i strongly supports increasing investments in the diversion infrastructure and delivery of community based health care and treatment to persons experiencing mental health and co-occurring disorders in Hawai'i. This robust infrastructure will divert people from our jails and prisons who do not belong there, and divert people from the Hawai'i State Hospital who do not meet the level of acuity required for that placement – and providing step down levels of supportive housing. In light of the number of provisions that violates rights to liberty, due process, equal protection and privacy under our Constitution, we oppose S.B. 1322 S.D. 1.

Sincerely,

Carrie Ann Shirota
Policy Director
ACLU of Hawai'i

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. 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. Since 1965, the ACLU of Hawai'i has been serving Hawai'i .

American Civil Liberties Union of Hawai'i
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LATE

DATE: February 25, 2025

TO: Members of the Senate Committee on Judiciary

FROM: Christopher D. Thomas, Attorney at Law, and on Behalf of IHS, Institute for Human Services, Inc.

RE: SB 1322- RELATING TO MENTAL HEALTH

POSITION: Support with Amendment Regarding Transport of ACT Patients

My name is Christopher Thomas; I am an attorney in Honolulu, and I work to obtain Assisted Community Treatment (ACT) Orders for the Institute of Human Services (IHS). Via IHS, a team of Psychiatrists, Outreach Workers, and legal professionals represent the highest utilizers of our ACT Statute within Hawai'i. IHS's Outreach Navigation Program (ONP) has treated, and continues to treat, a substantial 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 ONP utilizes to ensure the most vulnerable of our citizens are awarded the treatment they have the right to receive.

I support SB 1322 and the comprehensive amendments contained therein, overall, as a practical and common-sense update and clarification of our ACT law. Having practiced under former iterations of the law, I see SB 1322 as another comprehensive attempt to make the law more "user-friendly" and effective to treating professionals.

However, it is imperative that passage is subject to amendments regarding the transport of ACT Respondents, specifically by law enforcement, to a medical care facility to receive treatment. Please know that any individual that is subject to an ACT Order has already been determined, by clear and convincing evidence by a Court of Law of this State, to be imminently dangerous to either themselves or others. Furthermore, the ACT Court has already determined that mandatory medication is required, not contingent upon a subsequent mental health evaluation by a law enforcement officer or psychiatric provider. The portion of SB 1322 (page 48, 6-10) requiring an independent MH-1 or MH-2 evaluative process prior to transporting an ACT Respondent to receive medication is redundant and obfuscates the purpose of the current law. Failing to transport an ACT Respondent based upon the ACT Order alone is tantamount to ignoring a prior Court Order that has found an ACT Respondent to be dangerous and who must be given medication. Please consider amending the Bill to require mandatory transport for ACT treatment at the request of the ACT treating psychiatric provider. An ACT Order must be enforceable to be effective in treating a patient.

I respectfully request that SB 1322, via the amendment cited above, be given your full support through the legislative process.

Respectfully submitted,
Christopher D. Thomas, (808) 261-7710, cthomas@hawaiianfamilylaw.com