TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025

ON THE FOLLOWING MEASURE:
S.B. NO. 1322, S.D. 2, H.D. 1, RELATING TO MENTAL HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Tuesday, March 25, 2025 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas 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) indicates that emergency transportation of individuals be coordinated with a mental health emergency worker, when possible, (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 allows 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) removes the requirement that an ACT provider assess whether the subject of an ACT order, who fails to comply with that order, meets the criteria for involuntary hospitalization, (10) 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 (11) 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 Senate Committee on the Judiciary's amendments in S.D. 2 of the bill removed the requirement under section 334-129(c), HRS, for an ACT provider to assess whether an individual, who has failed to comply with an ACT order, meets the criteria for involuntary hospitalization. It is our understanding that the intent behind this amendment is to facilitate the emergency transport of individuals under an ACT order when they fail to comply with treatment—treatment that has already been found necessary "to prevent a relapse or deterioration that would predictably result in the person becoming imminently dangerous to self or others." Section 334-121, HRS.

To better effectuate this provision, the Department recommends incorporating it into the proposed section 334-D, HRS, beginning on page 8, line 1, as follows:

> **§334-D Emergency transportation initiated by a health care provider.** (a) 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 shall contact a mental health emergency worker. Upon confirmation by the mental health emergency worker that the individual is imminently dangerous to self or others, the individual shall

be transported, by ambulance, law enforcement, or other suitable means identified by the examining health care provider, to a licensed psychiatric facility or other facility designated by the director for [~~further evaluation and possible emergency hospitalization.~~] an emergency examination. The licensed physician, advanced practice registered nurse, physician assistant, licensed clinical social worker, or psychologist 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 person who made the application shall notify a mental health emergency worker of the written or oral ex parte order and,~~]

(b) Any individual who is subject to an order for assisted community treatment and fails to comply with the order for assisted community treatment, despite reasonable efforts made by a designated assisted community treatment provider, as defined in section 334-122, to solicit compliance, may be transported to a psychiatric facility or other facility designated by the director for an emergency examination if it is in the clinical judgment of a licensed physician, advanced practice registered nurse, physician assistant, licensed clinical social worker, or psychologist that the individual may be in need of emergency hospitalization pursuant to section 334-F. At the direction of the examining health care provider, a law enforcement officer may detain and transport the individual by ambulance or other suitable means to a psychiatric facility or other facility designated by the director. The examining health care provider shall provide a written statement of circumstances and reasons explaining why the individual may be in need of emergency hospitalization. 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.

(c) The health care provider, when possible, shall coordinate the transport of the individual with the mental health emergency worker.

Should the committee decide to adopt these revisions, the Department further recommends amending section 334-129(c)-(d), HRS, starting on page 49, line 20, to read as follows (the specific differences from the H.D. 1 are highlighted):

(c) A subject of the order may be transported to [~~a designated mental health program, or a hospital emergency department,~~] a psychiatric facility or other facility designated by the director for failure to comply with an order for assisted community treatment via the following methods:

(1) By an interested party with the consent of the subject of the order; or

(2) In accordance with section [~~334-59.~~] 334-D(b).

(d) The [~~designated mental health program's treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization or designee of the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization~~] assisted community treatment provider shall make [~~all~~] reasonable efforts to solicit the subject's compliance with the prescribed treatment. If the subject fails or refuses to comply after the efforts to solicit compliance, the [~~treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization~~] assisted community treatment provider shall [~~assess whether the subject of the order meets criteria for involuntary hospitalization under part IV of this chapter, and~~] proceed [~~with the admission pursuant to section 334-59(a)(2) or (3);~~] pursuant to section 334-C or 334-D; provided that the refusal of treatment shall not, by itself, constitute a basis for involuntary hospitalization.

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

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

KENNETH S. FINK, M.D., M.G.A, M.P.H
DIRECTOR OF HEALTH
KA LUNA HO'OKELE

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

Testimony in SUPPORT of SB1322 SD2 HD1
RELATING TO MENTAL HEALTH

REPRESENTATIVE DAVID TARNAS, CHAIR
REPRESENTATIVE MAHINA POEPOE, VICE CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date and Time: March 25, 2025, 2:00 p.m. Location: Room 325 and Video

Fiscal Implications: None

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

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

SB 1322 SD2 HD1 seeks to clarify, update, and revise Hawaii's mental health laws in an effort to help and support individuals with mental illness or substance use. The proposed modifications to Chapter 334 in SB 1322 SD2 HD1 modify or clarify the following: procedures available for emergency transportation, examination, and hospitalization; requiring treatment providers to provide relevant treatment information to the department of the attorney general, notice and waiver requirements for emergency hospitalization; removing the authority of the family court to appoint a legal guardian in a proceeding for involuntary hospitalization; removing the response requirement for psychiatric facilities on a notice of intent to discharge an involuntary hospitalization patient prior to discharge; circumstances under which an order for assisted community treatment would allow medication to be administered over the patient's objection; limitations on liability for an assisted community treatment provider; and

modifying requirements to obtain administrative authorization of medical treatment over objection of a patient in the custody of the Department of Health Director.

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

Offered Amendments: The Department requests that the health care provider shall provide a copy of the written statement required under section 334-D to the Department within five business days. This would allow our epidemiology staff to capture the trends/data for future policy decisions and to examine financial impacts to health care facilities.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR
KE KIAʻĀINA

MIKE LAMBERT
DIRECTOR

SYLVIA LUKE
LT GOVERNOR
KE KEʻENA

STATE OF HAWAIʻI | KA MOKUʻĀINA O HAWAIʻI
DEPARTMENT OF LAW ENFORCEMENT
Ka ʻOihana Hoʻokō Kānāwai
715 South King Street
Honolulu, Hawaiʻi 96813

JARED K. REDULLA
Deputy Director
Law Enforcement

TESTIMONY ON SENATE BILL 1322, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO MENTAL HEALTH
Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS
Tuesday, March 25, 2025, 2:00 p.m.
State Capitol Conference Room 325 & Videoconference
Testifiers: Mike Lambert

Chair Tarnas, Vice Chair Poepoe, and members of the Committee:

The Department of Law Enforcement (DLE) supports Senate Bill 1322, Senate Draft 2, House Draft 1. This bill clarifies the procedures for emergency transportation, examination, and hospitalization for individuals who may be mentally ill or suffering from substance abuse who are imminently dangerous to themselves or others. The bill establishes essential limitations on liability related to emergency procedures, requires treatment providers to provide relevant information to the Attorney General for assisted community treatment petitions, and streamlines several processes related to emergency and involuntary hospitalization procedures.

The DLE supports this measure as it directly enhances our ability to ensure appropriate treatment for individuals in mental health crises while providing necessary liability protections for those involved in emergency procedures. Law enforcement officers are often first responders to incidents involving individuals experiencing mental health crises, and this bill provides clearer procedures that will improve outcomes for these vulnerable individuals. DLE supports the utilization of the MHEW for routing if a field

determination is made by any authorized authority.

The streamlined processes for emergency hospitalization, including expanded notice requirements to include an individual's health care surrogate and the clarification allowing individuals to waive notice to family members, will help ensure proper care while respecting individual rights. Additionally, the removal of the requirement that psychiatric facilities wait for a response on a notice of intent to discharge an involuntary hospitalization patient will prevent unnecessary delays in appropriate discharges.

The provision allowing a single psychiatrist, rather than a panel of three, to provide administrative authorization for medical treatment over objection will reduce bureaucratic hurdles while maintaining appropriate medical oversight. This change, along with the clarification of circumstances for administering medication over objection in assisted community treatment orders, strikes an important balance between individual rights and necessary treatment.

These changes align with the DLE's ongoing commitment to improving crisis intervention responses and supporting better outcomes for individuals with mental illness or substance abuse disorders who encounter law enforcement. The liability limitations for assisted community treatment providers will help ensure that qualified professionals remain willing to participate in these essential services.

Thank you for the opportunity to testify in support of this bill.

SB-1322-HD-1
Submitted on: 3/21/2025 7:29:04 PM
Testimony for JHA on 3/25/2025 2:00:00 PM

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

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 Senate Judiciary Committee wisely removed that exemption and we respectfully suggest that there was no good reason for the House Committee on Health to reinsert it. The impetus apparently came from the Attorney General who claimed it was modeled after 127A-9(a) of the Hawaii Revised Statutes. Again, respectfully, that provision in the law has nothing to do with the situations that this measure contemplates. That section deals with emergency management and public utilities and extraordinary powers granted to the state during a time of crisis. The logic that that sort of provision can be analogized and applied to healthcare professionals interacting with individuals who have a mental illness is difficult to follow. We urge the Committee to delete that exemption.

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.

Thecurrent 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.

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

"Quality Healthcare For All"

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. David Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
March 25, 2025
2:00 PM
Hawaii State Capitol
Room 329 & Via Videoconference

Testimony in Support with Amendments on S.B. 1322, S.D. 2, H.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 **in support with amendments** on S.B. 1322, SD2, HD1, Relating to Mental Health.

HHSC's emergency rooms are critical to the healthcare delivery system in Hawaii's rural communities and are routinely at or over-capacity on a daily basis.

The mental health emergency worker (MHEW) contract with The Queen's Health System (QHS) has been invaluable for critical coordination efforts for limited resources and the professionalism of their staff has been exceptional. 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.

We request the following amendments:

> On Page 10, line 14 HHSC **strongly recommends** the extension of the duration that a patient may be admitted for emergency hospitalization for up to seventy-two hours, rather than the forty-eight hours, as currently reflected in the HD1. Extending the hold to 72 hours will provide additional time to stabilize the patient, develop a rapport and engage them in treatment as this patient population is not often immediately forthcoming with information, while decreasing the

bureaucratic burdens of prematurely applying for involuntary hospitalizations. These requests are often submitted simply to secure more time for stabilization and then are often withdrawn as the person is stabilized and no longer meets the criteria. Under §334-E, HRS, if a patient is provided an emergency examination and, at any point of the care, is determined to either not meet or no longer meet the criteria for involuntary hospitalization, *the patient must be discharged expeditiously.* This means that it is illegal for a hospital to hold a patient longer than is medically necessary.

1) In all situations that may arise, HHSC strongly requests that law enforcement officers and crisis intervention officers work through the MHEW program for coordination of transports to ensure appropriate utilization of HHSC's ERs. On page 4, §334-B, we understand that the occurrence when a law enforcement officer or crisis intervention officer is unable to reach a MHEW is *very* rare. Nevertheless, in the rare occurrence that law enforcement or a crisis intervention officer cannot reach a MHEW, HHSC still needs the officer to coordinate through the MHEW. As such, as an alternative, we suggest an amendment to allow the officer to detain the individual in cellblock until the MHEW is successfully contacted.

§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:

HHSC's responsibility is to ensure that our facilities are utilized appropriately and effectively to serve our mission of providing accessible, high quality, cost-effective services which address the healthcare needs of Hawaii's unique island communities. HHSC will certainly care for MH1s, 2s, 3s when these individuals arrive at our facilities; however, we need to ensure that access is available to all who need our services in the communities that we serve.

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

THE QUEEN'S HEALTH SYSTEMS

To: The Honorable David A Tarnas, Chair
The Honorable Mahina Poepoe, Vice Chair
Members, House Committee on Judiciary & Hawaiian Affairs

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

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

Date: March 25, 2025

Re: Comments on SB1322 SD2 HD1 – 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 with concerns on SB1322 SD2 HD1, which among other things clarifies and expands the circumstances and procedures available for emergency transportation, examination, and hospitalization under Hawaii Revised Statutes (HRS) chapter 334. We appreciate the intent of this measure but urge the Committee to recognize the impact of the bill's proposed changes to the existing mental health statute and associated processes as they relate to acute care hospitals. We also appreciate the amendments made by the previous committee regarding 334-D.

Queen's Manamana emergency department experiences the highest acuity mental and behavioral health patients in our state and, as such, we depend on the role mental health emergency workers (MHEW) play in determining appropriate crisis intervention and emergency stabilization and transportation. We urge stakeholders to carefully examine existing crisis intervention services that Queen's and others provide, 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.

We also urge the Committee 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 serious 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 of mental health services.

Thank you for allowing us to share our comments on SB1322 SD2 HD1.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI PALI MOMI STRAUB BENIOFF WILCOX

Tuesday, March 25, 2025 at 2:00 PM
Via Video Conference; Conference Room 325

House Committee on Judiciary & Hawai'ian Affairs

To: Representative David Tarnas, Chair
Representative Mahina Poepoe, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: Comments on SB 1322, SD2, HD1
Relating to Mental Health

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawaiʻi Pacific Health. Hawaiʻi Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapiʻolani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawaiʻi.

HPH provides the following COMMENTS on SB 1322, SD2, HD1 which clarifies and expands the circumstances and procedures available for emergency transportation, examination and hospitalization under chapter 334 and seeks, among other things, to clarify, update, and revise Hawaii's mental health laws in an effort to help and support individuals with mental illness or substance use.

HPH recognizes the difficulties in assuring that patients suffering from a mental illness or suffering from a substance abuse disorder receive care which is both necessary and appropriate based on their disorder. Many such patients are seen in the emergency departments of the HPH hospitals which can be crowded and understaffed. Traditionally in emergency care, the provider determines whether the patient has the capacity to make decisions at the time they are seen in the emergency department. Emergency room physicians are qualified and trained to evaluate for decisional capacity, and often do for a variety of medical reasons (e.g., delirium, cancer metastases to the brain, TBIs, etc.). If the patient does not have capacity, the provider treats the patient based on the usual standard of care under the theory of implied consent.

Section **334-E(a) Emergency examination** at Page 9 provides that a licensed physician, medical resident under the supervision of a licensed physician, or advanced practice registered nurse may conduct an initial examination and screening of the patient. §334-E(a) further requires that the patient be examined by a qualified psychiatric examiner. Such screenings would typically take place in the emergency department where a

psychiatrist or psychologist may not be immediately available to conduct the required psychiatric examination. This could result in delays in conducting the psychiatric examination and transporting the patient to an appropriate facility, as well as over burden the resources and staff of our acute care hospitals. We suggest that the requirement of having the patient examined by a qualified psychiatric examiner in the emergency department be deleted as provided below. This requirement is ambiguous and redundant as the patient must also be examined by a qualified psychiatric examiner when the patient is transported to an appropriate facility. Additionally, HPH as well as the other health care systems already have protocols in place to deal with patients suffering from mental health issues.

§334-E Emergency examination. (a) A licensed physician, medical resident under the supervision of a licensed physician, or advanced practice registered nurse may conduct an initial examination and screening of the patient, and administer treatment as indicated by good medical practice[~~; provided that the patient is further examined by a qualified psychiatric examiner~~]. A qualified psychiatric examiner shall conduct an emergency examination of a patient transported under section 334-B, 334-C, or 334-D without unnecessary delay and provide the patient with treatment as indicated by good medical practice; provided that the emergency examination shall include a screening to determine whether the patient meets the criteria for involuntary hospitalization as provided in section 334-60.2.

HPH appreciates the amendment in §334-F(b) of holding a patient hospitalized pursuant to an involuntary hospitalization for a period of 48 hours. This is consistent with current requirements.

Thank you for the opportunity to provide testimony.

HAWAII SUBSTANCE ABUSE COALITION

SB1322 SD2 HD1 ER Transportation, Exam and Hospitalization

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice Chair

Tuesday, Mar 25, 2025: 2:00: Room 325 Videoconference

Hawaii Substance Abuse Coalition Supports SB1322 SD2 HD1:

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.

ACLU Hawai'i

Committee:	Health
Hearing Date/Time:	Friday, March 25, 2025, at 2:00 p.m.
Place:	Conference Room 325 & Via Videoconference
Re:	***Testimony of the ACLU of Hawai'i in Opposition to S.B. 1322 S.D.2 H.D. 1 Relating to Mental Health***

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

Given ACLU of Hawaii's mandate to safeguard civil rights and liberties enshrined in our U.S. and Hawai'i Constitution, **we strongly oppose S.B. 1322 S.D. 2 H.D. 1 Relating to Mental Health.** This measure lacks due process safeguards, violates civil rights and liberties and opens the door to a legal challenge against the State of Hawai'i.

First and foremost, Courts have been clear that liberty interests of the individual, even if facing mental health issues, must be very carefully protected. In *Vitek v. Jones* 445 U.S. 480 (1980), the U.S. Supreme Court recognized that "for the ordinary citizen, commitment to a mental hospital produces 'a massive curtailment of liberty,' *Humphrey v. Cady,* 405 U. S. 504, 405 U. S. 509 (1972), and, in consequence, "requires due process protection." *Addington v. Texas,* 441 U. S. 418 (1979); *O'Connor v. Donaldson,* 422 U. S. 563 (1975) (BURGER, C.J., concurring)." A state may not commit somebody unless "his potential for doing harm, to himself or to others, is great enough to justify such a massive curtailment of liberty. *Humphrey v. Cady,* 405 U.S. 504, 509, 92 S.Ct. 1048, 1052, 31 L.Ed.2d 394 (1972).

In *Suzuki v. Yuen*, 617 F.2d 173, 176 (1980), the Ninth Circuit Court of Appeals noted that the state interest must be equally significant to the liberty interest that is being deprived: "In drafting involuntary commitment statutes, states should be cognizant of the "significant deprivation of liberty," *Addington, supra,* 441 U.S. at p. 424, 99 S.Ct. at p. 1809, and of the requirement that the countervailing state interest be equally significant." *Suzuki v. Yuen*, 617 F.2d 173, 176 (9th Cir. 1980).

Similarly, Hawai'i Courts have consistently held that involuntary commitment statutes result in significant deprivation of liberty interests and require due process safeguards.

The Hawai'i Supreme Court held in In re Doe, 102 Hawai'i 528, 543, 78 P.3d 341, 356 (App. 2003) that: "[C]ivil commitment of the mentally ill for any purpose constitutes

a significant deprivation of liberty that requires due process protection." The Court also held that:

> "To be considered "dangerous to self" under the Hawai'i statutory scheme ... it is not enough that an individual is unable to satisfy the need for nourishment, essential medical care, shelter or self-protection without supervision and assistance of others. There must also be clear and convincing evidence that the individual's inability to satisfy [their] need for nourishment, essential medical care, shelter or self-protection without supervision and assistance of others *will probably* result in death, substantial bodily injury, or serious physical debilitation or disease unless adequate treatment is afforded to the individual." In re Doe, 102 Hawai'i at 554, 78 P.3d at 367 (emphasis added).

In short, Hawai'i Courts recognize that there must be clear and convincing evidence that a person is dangerous to others or themselves before civil commitment and involuntary treatment is authorized under the law given the significant deprivation of liberty.

Voluntary Community-Based Treatment is More Effective Than Involuntary Treatment.

ACLU of Hawai'i acknowledges that individuals experiencing mental illness and/or substance abuse need support. Research, however, conclusively shows that voluntary treatment is more effective than involuntary treatment. For example, psychiatry research finds that there are serious harms that come from coercive treatment. One systematic review studied the literature on coercion in adult psychiatry, and found that "these interventions should be used with caution and as a last resort."[1]

Drug Policy Alliance's recently issued report, "**From Crisis to Care: Addressing Addiction, Mental Health, and Homelessness through Health and Supportive Services," explains the complex relationship** between mental health, drug use, and homelessness, and highlights effective and humane policy solutions that address these complex issues and create healthier, safer communities. https://drugpolicy.org/resource/report-from-crisis-to-care-addressing-addiction-mental-health-and-homelessness-through-health-and-supportive-services/

The report includes 5 recommendations:

- Invest in voluntary and evidence-based treatment.

  Treatment should be on-demand, affordable, accessible, and attractive. It can include outpatient therapy and treatment, medications that reduce overdose deaths, treatment that rewards positive steps, or residential care. These

[1] Chieze M, Hurst S, Kaiser S, Sentissi O. Effects of seclusion and restraint in adult psychiatry: a systematic review. Front Psych. (2019) 10:491. doi: 10.3389/ fpsyt.2019.00491; see also Sagduyu K, Hornstra R, Munro S, Bruce-Wolfe V. A comparison of the restraint and seclusion experiences of patients with schizophrenia or other psychotic disorders. Mo Med. (1995) 92:303–7.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

treatment options can lower overdose risk. They also help people stay in their community, keep their housing, and hold jobs.
• Establish community-based crisis response programs. • Implement supportive housing programs. • Reduce criminal penalties for drugs. • Invest in long-term solutions to public safety.

The proposed statute illustrates a troubling trend of Governor Green and the State Legislature proposing laws that strip away the constitutional rights of persons experiencing mental illness and/or substance use disorder.

A Comparison of Emergency Mental Health Laws found that:

"Twenty-one states require the hospital to allow the patient to make phone calls, 26 states offer the held person the ability to see an attorney, 12 states require that a hospital allow the refusal of treatment, and eight states guarantee the right to appeal the emergency hold. Twenty-nine states require the hospital to provide written notification of the reason for the hold."[2]

Hawai'i currently allows the right to make a phone call and see a health care professional for an assessment. However, other states offer much more robust protections to the rights of their residents. These states allow a right to know the reason for commitment, to refuse medication, to refuse treatment, to see an attorney, and a right to appeal.

Rather than increasing investments in forced treatment, Hawai'i should increase investments in 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

[2] Hedman, Leslie C., John Petrila, William H. Fisher, Jeffrey W. Swanson, Deirdre A. Dingman, and Scott Burris. State Laws on Emergency Holds for Mental Health Stabilization. Psychiatric Services, PS, 67, no. 5 (May 2016): 529–35. doi:10.1176/appi.ps.201500205.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

proceedings in Family Court. (The Director of ACLU National's Disability Rights Program concurs 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.

- 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.

- **Laura's Law in California** provides the right of counsel in cases of petitions for "assisted outpatient treatment."

  (c) The person who is the subject of the petition **shall have the right to be represented by counsel at all stages of a proceeding commenced under this section**. If the person so elects, the court shall immediately appoint the public defender or other attorney to assist the person in all stages of the proceedings. The person shall pay the cost of the legal services if he or she is able.

- **Kendra's Law in New York:**

  (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 commended under this section.

.

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**

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

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. **Emergency Transport (aka Detention)**

ACLU is concerned about the potential for serious harm resulting from emergency transports – **detention** - with armed officers and the risk of force and even deadly force against persons who are experiencing mental health and/or substance abuse crisis.

In addition to increasing the risk of harm, the proposed statute allows for a lower threshold to detain a person who poses a danger to self or others. Courts have held that law enforcement can only seize an individual for an emergency health evaluation if there is probable cause.

In ***Graham v. Barnette*, 970 F.3d 1075 (8th Cir. 2020**), the Court of Appeals established probable cause as the standard for emergency mental health seizures in the Eighth Circuit. The Court stated that the greater the intrusion on a citizen, the greater the justification required to deem that intrusion reasonable. **Of note, the Eighth Circuit concluded that being detained for a mental health evaluation is no less intrusive than a criminal arrest.** The Court also held that probable cause that a person poses an emergent danger to self or others "can tip the scales" of the Fourth Amendment's reasonableness balance test in favor of the government's interest to seize that person."

As noted by NAIMI, **"**estimates show that people with serious mental illness are **over ten times** as likely to experience use of force in interactions with law enforcement than those without serious mental illness." Far too often, this interaction results in death. The recent killing of a young woman on Maui illustrates the risks of deploying armed police officers to deal with a person experiencing a mental health crisis. https://www.civilbeat.org/2025/03/makawao-family-struggles-with-loss-of-troubled-woman-shot-by-police/

ACLU of Hawai'i supports the use of mobile crisis response teams, such as CAHOOTS in Oregon, to assist persons who are experiencing mental health crisis, or are suffering from substance abuse and are imminently dangerous to self or others**.** This includes connections or transportation to mental and medical health resources, housing assistance, substance abuse counseling and responding to situations where the underlying cause is unclear or involves multiple factors
https://whitebirdclinic.org/cahoots/

§334-B Emergency transportation initiated by a law enforcement officer includes a second layer of review. For example, under §334-B, a law enforcement officer is

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

required to consult with a mental health emergency, and if the mental health emergency worker determines that the individual is mentally ill or suffering from substance abuse and is imminently dangerous to self or others, the law enforcement officer shall detain the individual for transportation to an emergency examination.

§334-C Emergency transportation initiated by a court order includes an independent evaluation of evidence presented. Upon written or oral application of any licensed physician, advanced practice registered nurse, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue a written or oral ex parte order: (1) Stating that there is probable cause that the individual is: (A) Mentally ill or suffering from substance abuse; and (B) Imminently dangerous to self or others. Under this provision, the Judiciary, serving as an independent third party, has the opportunity to consider the evidence and determine whether there is probable cause to issue an order. If so, law enforcement will have the legal authority to transfer the individual directly to a psychiatric facility or other facility designated by the director for an emergency examination.

§334-D Emergency transportation initiated by a health care provider This original proposed language lacked procedural safeguards and was ripe for abuse. While we prefer the H.D.1 amendment compared to the original language, this entire section potentially violates an individual's constitutional rights.

The emergency transportation provisions likely violate constitutional rights unless law enforcement has evidence to meet probable cause that a person poses an emergent danger to self or others.

4. **Involuntary Medical Treatment Panel**

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."

The proposed legislation reduces the number of decision makers for involuntary medical treatment from a panel of 3 clinicians to a single psychiatrist.

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.

5. **Immunity from Liability Discriminates Against People with Disabilities or Perceived Disabilities.**

ACLU of Hawai'i strongly opposes the unequal liability standard proposed by the Attorney General's office.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

- 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.”

In its testimony, the Attorney General’s office compared the removal of liability for emergency workers and ACT providers, except in cases of willful misconduct, gross negligence, recklessness, to HRS 127A-9.

HRS 127A-9 relates to emergency powers and management.[3] While suspension of liability might be useful in the case of emergencies or disasters, it is not appropriate to draw parallels to mental health crises that individuals face. When an individual has mental health issues, they must still be treated with respect and should be able to obtain justice if mistreated.

It is inappropriate to draw parallels between 127A and encounters between individuals and mental health providers or law enforcement. Doing so would give undue powers and protections to people who need to be held accountable for wrongdoing. The suspension of liability, as outlined in 127A, is only appropriate in far more pressing situations of public and far-reaching consequence.

This provision is discriminatory against persons with disabilities or perceived disabilities and is reminiscent of Senate Bill 3047 (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.

In closing, the standard of care and liability should not be lowered for community assisted treatment providers.

[3] See **§127A-1 Policy and purpose.** “(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from natural or human-caused hazards, and in order to ensure that the preparations of this State will be adequate to deal with such disasters or emergencies; to ensure the administration of state and federal programs providing disaster relief to individuals; and generally to protect the public health, safety, and welfare, and to preserve the lives, property, and environment of the State.”

American Civil Liberties Union of Hawai‘i
P.O. Box 3410
Honolulu, Hawai‘i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

6. **This Proposed Measure Violates Privacy Rights by Sharing Protected Health Information to the Attorney General.**

We strongly oppose 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.

Of note, there's no sharing of private, protected health information like §334 in Laura's Law (California) or Kendra's Law (New York).

For these reasons, we ask this Committee to strike this provision from the proposed measure.

7. **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. The Assisted Community Treatment proceeding 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 our housing and mental health crisis. This includes creating and funding mobile crisis responses teams on every island, diversion infrastructure and delivery of community based health care and treatment to persons experiencing mental health and co-occuring disorders in Hawai'i. This robust infrastructure will divert people from our jails and prisons who do not belong there. Additionally, this infrastructure will divert people from the Hawai'i State Hospital who fail to meet the level of acuity or medical necessity required for placement.

As Governor Green has repeatedly stated, "Housing is health care." We need to provide step down levels of supportive housing and eliminate our undue reliance on jails, and prisons as default mental institutions.

Considering the number of provisions in this measure that lack due process safeguards and the serious risk of deprivation of liberty and even possibly life, we oppose S.B. 1322 S.D. 2 H.D. 1.

We ask that you consider creating a Task Force to study these public policy issues rather than passing this measure to ensure compliance with evidence based practices and our federal and Hawai'i Constitutions.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

Sincerely,

Carrie Ann Shirota
Policy Director
ACLU of Hawai‘i
cshirota@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 since 1965.

American Civil Liberties Union of Hawai‘i
P.O. Box 3410
Honolulu, Hawai‘i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

Adventist Health Castle

Together inspired™

640 Ulukahiki Street
Kailua, HI 96734
808.263.5420

To: The Honorable David A. Tarnas, Chair
The Honorable Mahina Poepoe, Vice Chair
Members, Committee on Judiciary & Hawaiian Affairs

From: Chase, Aalborg, President, Adventist Health Castle.

Re: Comments on SB1322 SD2 – Relating to Mental Health

Aloha. Adventist Health Castle ("Castle") is a 160-bed facility located on the windward side of the island of O'ahu serving all patients both on O'ahu and other Hawaiian Islands for a full range of acute care and ambulatory services and welcomes the opportunity to provide comments regarding **SB 1322 SD2,** which seeks to clarify and expand the circumstances and procedures available for emergency transportation, examination and hospitalization under Hawaii Revised Statutes, Chapter 334 relating to mental health.

Castle is the only facility on the windward side of Oahu with an inpatient acute care unit (Behavioral Health Services – "BHS") treating patients with mental illness. Castle appreciates SB 1322's intent but urges the Committee to fully review this Bill's impact to current operational processes already in effect and successfully working here in Hawaii hospitals.

Section 334-E(a) Emergency examination provides that a licensed physician, medical resident under the supervision of a licensed physician, or advanced practice registered nurse may conduct an initial examination and screening of the patient. §334- E(a) further requires that the patient be examined by a qualified psychiatric examiner. Such mandated examination and screenings would typically take place in a hospital, that unlike Castle would not have the dedicated rooms, staffing and beds sufficiently resourced for intake of individuals requiring a mental health screening (MH1).

Currently, all patients receive a thorough medical screening examination consistent with the Emergency Medical Treatment and Active Labor Act of 1986, "EMTALA", when presenting to a hospital emergency department. Such patients are then transferred to a facility such as Castle for appropriate inpatient care. Castle's intake process includes a mental health evaluation by a psychiatrist who is a member of Castle's medical staff.

Castle perceives that this requirement, while well intended is misguided and should be deleted from this bill. Castle as one of three facilities[i] on Oahu with licensed inpatient acute care mental health beds, is staffed and resourced to perform mental health screenings for all patients presenting or brought to our facility. However, Castle recognizes that our neighboring Hawaii hospitals are not staffed nor resourced to accommodate this requirement, which could lead to delay in transfer and strain existing hospitals already dealing with tight budgets and limited resources.

Similarly, the requirement found in §334-F(b) of holding a patient hospitalized pursuant to an involuntary hospitalization for a period of 72 hours, rather than the current 48 hours, arbitrarily increases the time a patient suffering from a mental illness transported to a hospital must remain

Adventist Health Castle

Together inspired™

640 Ulukahiki Street
Kailua, HI 96734
808.263.5420

hospitalized. Castle is unclear as to what this increase in length of a patient's emergency hospitalization seeks to achieve.

In closing, Castle appreciates the intent but has concerns that this bill creates challenges for Hawaii hospitals when current operations and processes are working to coordinate and facilitate transport of patients with acute mental illness.

In closing, Castle appreciates the opportunity to provide comment and further notes that mental health legislation needs to address housing because stable, affordable housing is crucial for discharge, follow up and recovery of individuals with mental illness. Secure housing alleviates chronic challenges including homelessness, lack of follow up care, substance abuse and ongoing psychological distress.

[i] Hawaii hospitals with licensed inpatient acute care beds for mental health care include Queens Medical Center, Adventist Health Castle, and Tripler Medical Center. Of these three hospitals, only Queens and Castle admit civilian patients for mental health care.

ACLU Hawai'i

Committee:	Judiciary & Hawaiian Affairs
Hearing Date/Time:	Tuesday, March 25, 2025, at 2:00 p.m.
Place:	Conference Room 325 & Via Videoconference
Re:	***Testimony of the ACLU of Hawai'i in Opposition to S.B. 1322 S.D.2 H.D. 1 Relating to Mental Health With Requested Amendments***

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The ACLU of Hawaii's **strongly opposes S.B. 1322 S.D. 2 H.D. 1 Relating to Mental Health.**

To date, detailed data relating to "emergency transports" and assisted community treatment in Hawai'i has been non-existent, or hidden from public access. This lack of transparency is dangerous and contributes to a lack of accountability.

While we respectfully request that you defer this measure, if you are inclined to move this bill forward, **we request the following amendments** to include reporting requirements to the Hawai'i Legislature on an annual basis.

The proposed reporting requirements to the Legislature mirrors the **reporting requirements** under Laura's Law (AB1421) in California:

(d) **Each county that operates an assisted outpatient treatment program pursuant to this article shall provide data to the State Department of Mental Health and, based on the data, the department shall report to the Legislature on or before May 1 of each year in which the county provides services pursuant to this article.** The report shall include, at a minimum, an evaluation of the effectiveness of the strategies employed by each program operated pursuant to this article in reducing homelessness and hospitalization of persons in the program and in reducing involvement with local law enforcement by persons in the program. The evaluation and report shall also include any other measures identified by the department regarding persons in the program and all of the following, based on information that is available:

(1) The number of persons served by the program and, of those, the number who are able to maintain housing and the number who maintain contact with the treatment system;
(2) The number of persons in the program with contacts with local law enforcement, and the extent to which local and state incarceration of persons in the program has been reduced or avoided;

(3) The number of persons in the program participating in employment services programs, including competitive employment;

(4) The days of hospitalization of persons in the program that have been reduced or avoided;
(5) Adherence to prescribed treatment by persons in the program;
(6) Other indicators of successful engagement, if any, by persons in the program;
(7) Victimization of persons in the program;
(8) Violent behavior of persons in the program;
(9) Substance abuse by persons in the program;
(10) Type, intensity, and frequency of treatment of persons in the program;
(11) Extent to which enforcement mechanisms are used by the program, when applicable;
(12) Social functioning of persons in the program;
(13) Skills in independent living of persons in the program; and
(14) Satisfaction with program services both by those receiving them and by their families, when relevant.

In Hawai'i, we would request similar reporting requirements. Understanding the number of people detained through each of the different "emergency transport" pathways (M1, M2, M3) and who the petitions for ACT are coming from is important. We are also requesting data collection relating to law enforcement's use of force to transport people and whether people are arrested during these "emergency transports."

Liability: In its testimony, the Attorney General's office compared the removal of liability for emergency workers and ACT providers, except in cases of willful misconduct, gross negligence, recklessness, to HRS 127A-9. 127A-9 relates to emergency powers and management. While suspension of liability might be useful in the case of emergencies or disasters, it is not appropriate to draw parallels to mental health crises that individuals face. When an individual has mental health issues, they must still be treated with respect and should be able to obtain justice if mistreated. It is inappropriate to draw parallels between 127A and encounters between individuals and mental health providers or law enforcement. Care providers are employed for the purpose of caring for these individuals, and lowering the standard is inconsistent with the goals of their employment. Doing so would give undue powers and protections to people who need to be held accountable for wrongdoing. The suspension of liability, as outlined in 127A, is only appropriate in far more pressing situations of public and far-reaching consequences.

Sincerely,

Nathan Lee
Policy Legislative Fellow
ACLU of Hawai'i
nlee@acluhawaii.org

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

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

TO: Honorable Representative David A. Tarnas
Chair, House Committee on Judiciary & Hawaiian Affairs

Honorable Representative Mahina Poepoe
Vice Chair, House Committee on Judiciary & Hawaiian Affairs

FROM: Angie Knight, Community Relations Manager
IHS, Institute for Human Services, Inc.

RE: SB 1322 SD2 HD1 - RELATING TO MENTAL HEALTH

DATE: March 25, 2025

POSITION: IHS supports the passing of SB 1322 SD2 HD1 with comments

As a homeless service provider with broad experience outreaching to chronically homeless individuals, including filing petitions for Assisted Community Treatment (ACT) in the State of Hawai‘i, IHS, The Institute for Human Services, supports the passing SB1322 SD2 HD1.

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 statutes that leave room for interpretation and prevent effective execution of court orders that are meant to insure access to treatment for persons so mentally ill and substance addicted, that they pose danger to the community and refuse treatment for their conditions.

We support amendments to the statute that would ensure courtesy transport by law enforcement when needed to initiate treatment in a hospital or emergency department under a court order for Assisted Community Treatment. At times, they have been unwilling to transport for initiation of treatment unless the individual being transported to treatment met criteria for MH1 or MH2 despite an ACT order issued by a Judge who had already determined that the individual poses an imminent danger to self or others. Emergency services should and are allowed to provide courtesy transport to execute the treatment of the subject of an ACT order to ensure he/she is safely transported to treatment without delay. However, instead of saying those who execute transport are immune except for “willful misconduct, gross negligence, or recklessness,” they should follow the existing law, which does have a rule called per se negligence, meaning that if they follow standard procedures, they are presumed to not be negligent. We suggest that a solution to clear up questions of liability would be to mandate developing protocols and then say that as long as they follow the protocols, they are immune because, by definition, they would not be considered negligent.

We strongly support requiring individuals displaying symptoms of mental illness that result in emergency transport by emergency services to be provided an emergency evaluation that includes determination of appropriateness for ACT. Mahalo for the opportunity to testify.

SB-1322-HD-1
Submitted on: 3/25/2025 10:38:14 AM
Testimony for JHA on 3/25/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brendan Joanou	Individual	Support	Remotely Via Zoom

Comments:

Aloha,

I am in support of this bill because I believe that it will help to better facilitate mental health care to vulnerable members of our population.

Mahalo,

Brendan Joanou