



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

**House Committee on Health
HB 1114, Relating to Infectious Disease Testing**

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 13, 2009, 8:30 a.m.

1 **Department's Position:** The Department strongly supports this Administration proposal.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** The purpose of this proposal is to facilitate HIV testing by health care
4 providers to improve early diagnosis of HIV infections by removing significant procedural barriers to
5 HIV testing. This will be accomplished by amending Hawaii Revised Statutes §325-16 to replace the
6 requirement for pre-test HIV counseling and for written informed consent with an opt-out requirement.
7 Opt-out requires a health care provider to inform a patient, either verbally or in writing that they plan to
8 perform a test to detect HIV infection and allows the patient to decline this test.

9 In 2006, the Centers for Disease Control and Prevention (CDC) strongly recommended that States
10 that have laws requiring written informed consent and pre-test counseling change to a procedure that
11 notifies the patient that a test to detect HIV infection is planned and allows the patient to decline the test.
12 CDC estimates that one out of four Americans who have HIV do not know they are infected, in part, due
13 to barriers to HIV testing. The American Academy of HIV Medicine, American Medical Association,
14 American College of Physicians, American College of Emergency Physicians, American College of
15 Obstetrics and Gynecology, Association of State and Territorial Health Officials, and many other
16 respected medical and nursing organizations already endorse this recommendation.

1 This change in law will have numerous positive benefits for the patient, their partners, the
2 community, and providers of health care services. It will allow Hawaii's health care providers to more
3 easily offer HIV testing and will result in more individuals, including pregnant women, being able to
4 learn their HIV status early and access HIV care and treatment if they are infected. An early HIV
5 diagnosis will allow many individuals to remain healthy, continue working, and maintain their health
6 insurance. They will be able to access prevention services earlier, which can lower the risk of HIV
7 transmission to their partners and others. It will also help to contain the costs of emergency and
8 inpatient HIV critical care for private and public medical insurers and/or individual patients.

9 Thank you for the opportunity to testify.



Life Foundation

WRITTEN TESTIMONY

House of Representatives - Committee on Health
Friday, February 13, 2009, 8:30 a.m. - Room 329

HB 1114 RELATING TO INFECTIOUS DISEASE TESTING

FIGHTING AIDS
IN HAWAII
AND THE PACIFIC

Chairman Yamane, Vice Chairman Nishimoto and Members of the Committee on Health:

Life Foundation, Hawaii's oldest and largest HIV/AIDS organization asks to be recorded **In Support** of this bill, which seeks to amend the state's longstanding HIV Informed Consent statute.

In the early years of the AIDS epidemic in Hawaii, the legislature, in its wisdom, enacted a law that prohibited testing anyone for HIV infection without pre and post test counseling and written informed consent by the person to be tested. Given the significant shame, stigma, prejudice and ignorance surrounding AIDS at that time, the approach taken by the state was both commendable and appropriate.

The CDC has determined that nearly 25% of people infected by HIV do not know their status and, as a result, are not in a position to seek early medical intervention for the treatment of HIV and related conditions. At the same time, the CDC reports that annual HIV infections in the United States are not declining but remain stable at about 56,000 newly reported cases each year.

The purpose of this legislation is to remove the requirements of pre-test counseling and a separate written informed consent before an HIV test can be administered in a healthcare setting. As with all diagnostic tests, a general consent will still be required before testing.

This legislation only pertains to healthcare settings. Sites that provide anonymous or confidential HIV testing, such as the Life Foundation and the Department of Health, will still be required to offer counseling before and after a test is administered.

Because this legislation will help make HIV testing a routine healthcare practice, it has the potential of finding HIV positive people who would not otherwise seek HIV testing. At the same time, we are confident that existing privacy laws and healthcare practices will continue to safeguard the confidentiality that is so important to people infected with HIV.

677 ALA MOANA BLVD.

SUITE NO. 226

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HAWAII

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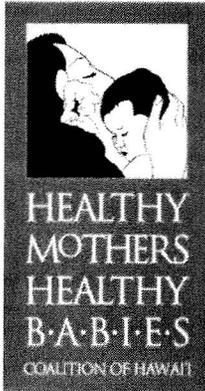
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www.lifefoundation.org

Paul S. Groesbeck
Executive Director

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Aloha United Way



February 11, 2009

Committee: On Health
Bill: HB 1114

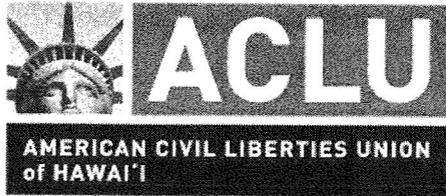
Honorable Chairperson Yamane and Members of the Health Committee:

My name is Jackie Berry, Executive Director of Healthy Mothers Healthy Babies Coalition of Hawaii. HMHB IS IN STRONG SUPPORT OF HB1114, Relating to Infectious Disease Testing. This bill will make it easier for healthcare providers to offer HIV testing to pregnant women and other patients. Knowing your HIV status as a pregnant woman is critically important to having a healthy birth outcome.

This bill allows Hawaii to follow the recommendations of the Centers for Disease Control (CDC) to increase testing in health care settings.

We urge your support for the passage of this bill.

Mahalo for your consideration of this issue and our testimony.



VIA EMAIL: hlttestimony@capitol.hawaii.gov

Committee: Committee on Health
Hearing Date/Time: Friday, February 13, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 329
Re: *Testimony of the ACLU of Hawaii in Opposition to H.B. 1114, Relating to Infectious Disease Testing*

Dear Chair Yamane and Members of the Committee on Health:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1114, which proposes to expand routine HIV testing by eliminating the safeguards that ensure HIV testing is voluntary and informed. While we agree that increasing access to testing and care is a critically important goal, S.B. 932’s proposal to eliminate written consent and counseling requirements is not the answer. HIV testing must remain informed and voluntary.

Eliminating written consent and counseling requirements threatens Hawaii residents’ health and privacy, goes against long-standing principles of patient autonomy in medical decision-making and ignores the important benefits that informed consent and counseling provide to patients being testing for HIV.

1. *Involuntary and uninformed medical testing for HIV violates the privacy rights of Hawaii’s citizens.*

The Hawaii Constitution explicitly protects every individual’s fundamental right to privacy, including privacy in the informational and personal autonomy sense.

Art. I, §6, of the Hawaii Constitution, as adopted by the 1978 Constitutional Convention and as ratified by the electorate, secures personal privacy as a fundamental right of the highest order. Specifically, the provision states:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

American Civil Liberties Union of Hawaii
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Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 13, 2009
Page 2 of 5

Art. I, §6, Haw. Const. The Supreme Court of Hawaii has held that the Hawaii Constitution must be construed with due regard to the intent of the framers and the people adopting it. *State v. Kam*, 69 Haw. 483, 492, 748 P.2d 372, 377 (1988) (citing *State v. Lester*, 64 Haw. 659, 649 P.2d 346 (1982)). The fundamental principle in interpreting a constitutional provision is to give effect to that intent. *Id.* (citing *Huihui v. Shimoda*, 64 Haw. 527, 644 P.2d 968 (1982); *State v. Kahlbaun*, 64 Haw. 197, 638 P.2d 309 (1981); *State v. Miyasaki*, 62 Haw. 269, 614 P.2d 915 (1980)). In discussing the intent of the framers in adopting the Art. I, §6, of the Hawaii Constitution, the Supreme Court of Hawaii has noted:

The proposal to expressly acknowledge the ‘right of the people to privacy’ was offered by the Committee on Bill of Rights, Suffrage and Election of the Constitutional Convention of Hawaii of 1978. After reviewing the privacy provision in the Hawaii counterpart of the Fourth Amendment, the committee reported ‘it would be appropriate to retain [this] privacy provision ... but limit its application to criminal cases, *and create a new section as it relates to privacy in the informational and personal autonomy sense.*’

Nakano v. Matayoshi, 68 Haw. 140, 147, 706 P.2d 814, 818 (1985) (citing Stand .Comm. Rep. No. 69, in Proceedings of the Constitutional Convention of Hawaii of 1978 (Proceedings), Vol. I, at 674) (emphasis added).

The plain language of the Constitution, as bolstered by the framers’ intent, makes clear that the right to privacy in Hawaii is — in and of itself — a fundamental right. The right of privacy “is so important in value to society that it can be infringed upon only by the showing of a compelling state interest. If the State is able to show a compelling state interest, the right of the group will prevail over the privacy rights or the right of the individual. However, in view of the important nature of this right, the State must use the least restrictive means should it desire to interfere with the right.” *State v. Kam*, 69 Haw. at 493, 748 P.2d at 378 (citing Stand. Comm. Rep. No. 69, in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Vol. I at 674-75).

S.B. 932 erodes our privacy rights contrary to our State’s values and to the stated purpose of Hawaii’s privacy clause in that it would allow doctors to invade patients’ bodies without their consent and without informing them of important consequences, including that Hawaii state law requires doctors to report the names of those who test positive for HIV. Patients would also not

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Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 13, 2009
Page 3 of 5

be informed that anonymous testing (in which the individual's name is not reported) is available in Hawaii. If the state of Hawaii is going to invade people's privacy by searching their bodies and collecting their names and personal information, then it is imperative under the Hawaii Constitution that people at least have the right to know what they are being asked to do and what their alternatives are before they consent to testing.

2. *Obtaining documented and informed consent is the best way to avoid potential liability in malpractice and discrimination lawsuits.*

While, on the surface, forgoing written consent and pre-test counseling may seem appealing to medical professionals, the reality is that doctors take the risk that they will later have to prove -- with no written record -- that a patient consented to an HIV test after being informed fully of the implications.

3. *People who are tested with their knowledge are more likely to get the care they need.*

While diagnosis soon after infection can add to life expectancy, it only applies if people get treatment after testing positive. Patients tested without consent and/or without understanding the possible significance of the test are more likely to be alienated from care.

Similarly, because HIV-positive adolescents are at greater risk of self-destructive behavior without adequate counseling, eliminating the requirements may jeopardize teen health and actually hamper efforts to prevent transmission of HIV.

4. *People need more information about why they may be at risk for HIV, not less.*

Many people are still in the dark about basic facts regarding HIV transmission. Increased offers of testing provide an excellent opportunity to educate patients about HIV and thus change risk behaviors and reduce the HIV/AIDS stigma that is fueled by misinformation about the routes of HIV transmission. Eliminating pre-test prevention counseling means losing a critical opportunity to educate people about HIV.

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5. *Tangible benefits result from the doctor-patient dialogue that the informed consent requirement envisions, including increased trust and a greater likelihood that a patient will be linked to follow up care.*

Many of the populations that are in the most need of increased testing may already be mistrustful of public-health efforts. Even those who trust the government and their doctors are likely to fear them if they are tested without their knowledge or fully informed consent.

If the Committee finds that the current rules are not effective, then Hawaii should look at successful models that encourage providers to offer HIV testing to a broader range of people without abandoning safeguards that ensure that testing is informed and voluntary.¹

Written consent and counseling need not be barriers to testing. People will be better able to take care of themselves and one another if medical providers routinely offer testing and explain its benefits. When people can make voluntary and informed decisions to protect their health, everyone wins.

For other resources on why written informed consent and counseling are important, see:

- American Bar Association comments on the CDC recommendations, available at <http://www.champnetwork.org/media/aba.pdf>
- American Academy of HIV Medicine comments to the CDC, available at <http://www.champnetwork.org/media/AAHIVM.pdf>
- AIDS Alliance for Children, Youth and Families comments to the CDC, available at <http://www.champnetwork.org/media/AIDS-Alliance.pdf>
- National Association of People with AIDS (NAPWA) comments on CDC recommendations, available at http://www.napwa.org/documents/routine_testing_counseling.pdf

¹ See Centers for Disease Control and Prevention, Revised Recommendations for HIV testing of adults, adolescents, and pregnant women in health-care settings, MMWR (No. RR-14), at 6 (2006) [citing Rothman, supra note 8, at 33 (finding that emergency room testing can be increased by streamlining the counseling and providing some information in writing, as well as by involving non-physician staff in counseling)]. Available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.html>

Hon. Rep. Yamane, HLT Committee,
and Members Thereof
February 13, 2009
Page 5 of 5

- Comments on the CDC recommendations by community-based organizations serving people living with HIV, available at http://www.aidschicago.org/pdf/2006/adv_testing_statement.pdf
- Ann Fisher, Catherine Hanssens & David Schulman, The CDC's Routine HIV Testing Recommendation: Legally, Not so Routine, 11 HIV/AIDS Policy & Law Review 17 (Dec. 2006), available at <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=955>

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii 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 Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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Hawai'i HIV/AIDS Community Planning Group
C/O Hawaii Department of Health, STD/AIDS Prevention Branch
3627 Kilauea Avenue, Room 305
Honolulu, Hawaii 96816

Bill: **HB1114, Relating to Infectious Disease Testing**

Hearing: **House Committee on Health. Date: Friday, February 13, 2009. 8:30 am**

Room: **Conference Room 329**

Chair person: **Rep. Ryan Yamane**

Dear Chair Ryan Yamane and Committee Members:

My name is Jon Berliner and I am one of the Community Co-Chairs of the **Hawai'i HIV/AIDS Community Planning Group**. I am providing this testimony on behalf of the Hawaii HIV/AIDS Community Planning Group Steering Committee. At our Steering Committee meeting Monday, February 9, 2009, we voted to authorize this testimony on behalf of the Steering Committee of the Hawaii HIV/AIDS Community Planning Group (CPG) to express strong support of HB 1114. The CPG Steering Committee oversees the vision and direction of community planning around prevention and care services for HIV and AIDS, and in turn advises the Hawaii Department of Health on these services.

Thank you for the opportunity to testify in strong support of HB 1114. This bill will support the reduction in barriers to HIV counseling and testing and is in line with recommendations issued by the Centers for Disease Control and Prevention. The **Hawai'i HIV/AIDS Community Planning Group Steering Committee** strongly supports passage of this bill. The following documents the benefits of this bill:

- reduce barriers to HIV counseling and testing by make it more efficient for healthcare providers
- allow Hawaii to follow the recommendations of CDD and major national organizations in support of increased testing in health care settings
- help reduce the estimated 25% of Americans who are HIV positive but do not know their HIV status because they have not been tested
- help many individuals in Hawaii to learn their HIV status and seek care and treatment
- help reduce transmission of HIV in Hawaii and reduce the long term costs to those infected and to our state
- help make HIV testing by healthcare providers more routine and reduce the stigma based on offering testing by perceived risk
- make it easier for healthcare providers to offer HIV testing to pregnant women and other patients
- reduce the missed opportunities for individuals to learn their HIV status when they are in contact with healthcare providers
- allow individuals to learn their HIV status earlier and receive early care services which will allow them to stay healthier, maintain employment and reduce the high costs of emergency room and hospital care
- allow individuals to learn their HIV status earlier and receive early prevention services which reduce HIV transmission to others
- ensure that all patients testing HIV positive will receive their results and be offered appropriate counseling

Thank you for the opportunity to testify in strong support of HB 1114.

Sincerely and with aloha,

Jon Berliner, Community Co-Chair
Hawai'i HIV/AIDS Community Planning Group

nishimoto2-Bryce

From: Keith Wolter [keith@mauiids.org]
Sent: Thursday, February 12, 2009 11:14 AM
To: HLTtestimony
Subject: Testimony for HB 1114

Bill: **HB1114, Relating to Infectious Disease Testing**

Hearing: **House Committee on Health. Date: Friday, February 13, 2009. 8:30 am**

Room: **Conference Room 329**

Chair person: **Rep. Ryan Yamane**

My name is Keith Wolter and I am the Executive Director of Maui AIDS Foundation (MAF). Thank you for the opportunity to testify in support of HB 1114.

This bill will help to reduce barriers to HIV testing by eliminating two major obstacles: the requirements for written pre-test consent and pre-test counseling. I have worked with AIDS Service Organizations and in the HIV testing field for over ten years, for the past three years here on Maui and previously in the states of Washington and Idaho. Based on my professional experience I can say with complete conviction that eliminating these barriers /by passing HB 1114/, while at first seemingly counterintuitive, would be an excellent and wise move enabling us to improve our ability to reach those at-risk. I have seen the elimination of these two barriers improve efficiencies and effectiveness in HIV testing and outreach.

Therefore, I strongly support passage of this bill for all of the following reasons:

- * reduce barriers to HIV counseling and testing by make it more efficient for healthcare providers
- * allow Hawaii to follow the recommendations of the Centers for Disease Control and major national organizations in support of increased testing in health care settings
- * help reduce the estimated 25% of Americans who are HIV positive but do not know their HIV status because they have not been tested
- * help many individuals in Hawaii to learn their HIV status and seek care and treatment
- * help reduce transmission of HIV in Hawaii and reduce the long term costs to those infected and to our state
- * help make HIV testing by healthcare providers more routine and reduce the stigma based on offering testing by perceived risk
- * make it easier for healthcare providers to offer HIV testing to pregnant women and other patients
- * reduce the missed opportunities for individuals to learn their HIV status when they are in contact with healthcare providers
- * allow individuals to learn their HIV status earlier and receive early care services which will allow them to stay healthier, maintain employment and reduce the high costs of emergency room and hospital care
- * allow individuals to learn their HIV status earlier and receive early prevention services which reduce HIV transmission to others
- * ensure that all patients testing HIV positive will receive their results and be offered appropriate counseling.

Thank you for the opportunity to testify in support of HB 1114.

Keith Wolter, Executive Director
Maui AIDS Foundation
808.242.4900 ext 224

nishimoto2-Bryce

From: katz001@hawaii.rr.com
Sent: Thursday, February 12, 2009 9:09 AM
To: HLTtestimony
Subject: Testimony in support of HB1114, to be heard by House Committee on Health, 2-13-2009, 0830, Conf room: 329

Bill: HB1114, Relating to Infectious Disease Testing

Hearing: House Committee on Health. Date: Friday, February 13, 2009. 8:30 am

Room: Conference Room 329

Chair person: Rep. Ryan Yamane

Testimony submitted by Alan Katz, MD, MPH, 1030 Mokapu Blvd., Kailua, HI 96734

My name is Alan Katz. I am a physician epidemiologist and faculty member at the John A. Burns School of Medicine, University of Hawaii, but I do not represent the University of Hawaii. I only represent myself. Thank you for the opportunity to testify in strong support of HB1114.

This bill will greatly reduce existing barriers to HIV testing. The recommended legislation has been developed in consultation with the US Centers for Disease Control and Prevention. If passed it will help facilitate HIV testing for persons being seen in health care settings but will continue to protect the confidentiality of persons being tested. By making HIV testing more routine, the stigma which is still attached to HIV testing will be minimized. It is essential for persons to learn their HIV status as early as possible, as early therapeutic intervention can optimize an HIV-infected person's health and reduce health care costs associated with the severe manifestation related to delayed diagnosis and untreated HIV disease.

Thank you for the opportunity to testify in strong support of HB1114.