



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

**Testimony COMMENTS ONLY on HB2559
Relating to Mental Health**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 5, 2016, 10:15 a.m. Room Number: 329

1 **Fiscal Implications:** Undetermined at this time.

2 **Department Testimony:** The Department of Health (DOH) defers to the Department of the
3 Attorney General on this measure, although we have concerns and would like to offer comments.
4 This bill proposes a policy change; specifically asking family courts to consider assisted
5 community treatment (ACT) as an alternative to involuntary civil commitment.

6 The purpose of this bill is to require the family court to consider using assisted
7 community treatment as an alternative to commitment to a psychiatric facility when a person is
8 subject to a petition for involuntary hospitalization. The use of ACT in the State of Hawaii has
9 been minimal. From the time the ACT went into effect through June 30, 2015, no petitions for
10 ACT have been granted by Family Courts.

11 As currently written, and based on time estimates for administrative document
12 preparation and processing, this bill will significantly increase the paperwork burden for mental
13 health professionals when seeking to petition for civil commitments. We believe this bill likely
14 will decrease access to mental health services because Hawaii already has a shortage of mental
15 health professionals, especially on the outer islands. For example, this measure will increase the

- 1 time spent on legal paperwork with uncertain and possibly minimal benefits. We recommend the
- 2 current practice of separate petitions for civil commitment and ACT.
- 3 Thank you for the opportunity to testify.
- 4 **Offered Amendments:** None.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2559, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 5, 2016

TIME: 10:15 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Julio C. Herrera, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but does not support this bill as it is currently written.

This bill amends chapter 334, Hawaii Revised Statutes (HRS), relating to involuntary psychiatric hospitalization and assisted community treatment. Specifically, this bill requires the family court to consider assisted community treatment as an alternative to commitment to a psychiatric facility for a person subject to a petition for involuntary hospitalization.

Section 1 of this bill inserts a requirement that a petitioner for involuntary hospitalization also request assisted community treatment, pursuant to part VIII of this chapter, as alternative relief, on page 1, starting on line 6. Section 2 of this bill inserts a requirement that the notice in a petition for involuntary hospitalization include a statement that the family court could order assisted community treatment, in lieu of involuntary hospitalization, on page 4, starting on line 16. Section 3 of this bill inserts a requirement that if the family court finds that a person does not meet criteria for involuntary hospitalization, that it assess whether the person meets criteria for assisted community treatment and, if so, order that treatment to commence, on page 5, starting on line 14. Section 4 of this bill inserts an explanation that a petition for assisted community treatment can be initiated independently or as a request for alternative relief in a petition for involuntary hospitalization, on page 6, starting on line 3. Finally, sections 5, 6, and 7 strike the repeal provisions, set for July 1, 2020, from pertinent session laws.

We have concerns regarding the practical implications of this bill. First, involuntary hospitalization proceedings and assisted community treatment proceedings are different matters,

with different criteria, and require separate petitions. Second, the parties requesting these matters to be heard by the court are different.

The criteria for involuntary hospitalization are laid out in section 334-60.2, HRS, stating that a person may be committed to psychiatric facility, if a court finds that:

- (1) The person is mentally ill or suffering from substance abuse;
- (2) The person is imminently dangerous to self or others; and
- (3) The person is in need of care or treatment, or both, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization.

The criteria for assisted community treatment are laid out in section 334-121, HRS, stating that a person may be ordered to obtain assisted community treatment, if a court finds that:

- (1) The person is mentally ill or suffering from substance abuse; and
- (2) The person is unlikely to live safely in the community without available supervision based upon the professional opinion of a psychiatrist; and
- (3) The person, at some time in the past: (A) has received inpatient hospital treatment for mental illness or substance abuse or (B) has been found to be imminently dangerous to self or others, as a result mental illness or substance abuse; and
- (4) The person, based on the person's treatment history and current condition, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others; and
- (5) The person has a history of a lack of adherence to treatment for mental illness or substance abuse, and the person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment; and
- (6) The assisted community treatment is medically appropriate, and in the person's medical interests; and
- (7) Considering less intrusive alternatives, assisted community treatment is essential to prevent the danger posed by the person.

Aside from the first criteria, requiring that an individual be mentally ill or suffering from substance abuse, these proceedings require very different findings. Combining these two

complex proceedings on one petition, would have the effect of inserting uncertainty and confusion into the implementation of this law.

Adding further to the confusion, the parties requesting the respective petitions are different. Our Department assists the various psychiatric hospitals in the filing of petitions for involuntary hospitalization. Their requests ask the court to order an individual to remain in the hospital to receive treatment for up to ninety days. Contrast that with a petition for assisted community treatment, which asks the court to order an individual to receive treatment in the community. Combining the two processes, would require the psychiatric hospitals to follow the individual's treatment in the community, in the event that they do not meet criteria for involuntary hospitalization. However, the statutory scheme for assisted community treatment is designed so that an individual's treatment in the community is followed not by a hospital, but by an aftercare provider.

Currently, section 334-60.7(b), HRS, already allows a psychiatric hospital contemplating discharge of an involuntary patient to assess whether an assisted community treatment plan is indicated. If so indicated, that hospital can coordinate with an aftercare provider as part of discharge planning. The aftercare provider, in turn, would file the petition for assisted community treatment, if appropriate. This section demonstrates that these are two different proceedings, requiring separate petitions, requested by different entities.

We take no position on the sections of this bill striking the repeal provisions.

We urge this Committee not to combine these two different proceedings.

HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 7:54 PM
To: HLTtestimony
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for HB2559 on Feb 5, 2016 10:15AM

HB2559

Submitted on: 2/3/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Support	No

Comments: Aloha Chair Au Belatti, Vice Chair Creagan and members of the House Committee on Health. Mahalo for this opportunity to testify in Support of HB2559. May we point out and request amendment that in 334-6O.3 Initiation of proceeding for involuntary hospitalization, "APRN" has been omitted in, "the petition may be accompanied by the administrator's certificate in lieu of a physician's or psychologist's certificate." Insertion of "APRN" in this language would appear to complete the bill. Mahalo for all you do to support advance practice nursing and to uphold the safety and welfare and health of the people of our great state. Respectfully, and with Warmest Aloha, Wailua Brandman APRN FAANP, HAPN Legislative Committee Chair

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 8:26 PM
To: HLTtestimony
Cc: julie.takishima@yahoo.com
Subject: Submitted testimony for HB2559 on Feb 5, 2016 10:15AM

HB2559

Submitted on: 2/4/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Folen, Ph.D.	Hawai'i Psychological Association	Support	No

Comments: Hawai'i Psychological Association respectfully submits testimony in support of this bill.
Sincerely, Ray Folen, Ph.D. Executive Director

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 11:07 PM
To: HLTtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for HB2559 on Feb 5, 2016 10:15AM

HB2559

Submitted on: 2/3/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	No

Comments: The assisted community treatment program is a very good idea. However, we question whether mixing that procedure with the civil commitment statute makes sense. It may be less confusing to maintain them separately, especially since the criteria are different.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov