

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

LATE

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

Senate Committees on Health and Human Services and Judiciary

Monday, February 13, 2023

10:30 a.m.

State Capitol, Conference Room 016 and Videoconference

In Support

S.B. No. 1492, Relating to Mental Health

Aloha Chairs San Buenaventura and Rhoads, Vice Chairs Aquino and Gabbard, and members of the Committees on Health and Human Services and Judiciary:

The Office of the Governor **SUPPORTS** S.B. No. 1492, Relating to Mental Health.

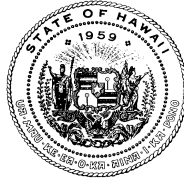
This Administration is focused on finding solutions that address and provide additional resources to support Hawaii's ongoing mental health and homelessness challenges.

S.B. No. 1492 would provide methods to treat individuals suffering from untreated severe mental illness, including through Assisted Community Treatment (ACT). Additionally, the bill would require the Department of Health to track and publicly report certain data relating to crisis reports, emergency mental health transports, and court-ordered treatments and provides the department with appropriations for software and data collection and publication. S.B. No. 1492 would also require courts, when dismissing an involuntary hospitalization petition for a person, to assess whether that person meets the criteria for ACT.

The Hawaii Coordinated Access Resource Entry System (CARES), administered by the Department of Health, serves as a 24/7 coordination center for mental health, crisis, and substance use intervention. From June 1, 2022 to December 27, 2022, Hawaii CARES received approximately 70,000 calls. Hawaii CARES works closely with contracted community providers to provide in-person crisis intervention services across the state and support individuals and families struggling with access to mental health resources.

S.B. No. 1492 would complement programs already in place by granting providers and the judicial system more tools to ensure that individuals can receive appropriate treatment.

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



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 S.B. 1492
RELATING TO MENTAL HEALTH**

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

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date, Time and Room Number: Monday, February 13, 2023, 10:30 a.m. in Rm. 016/VIDEO

1 **Fiscal Implications:** Undetermined. The Department of Health (“Department”) requests that
2 this measure be considered as a vehicle to provide needed funding so long as it does not
3 supplant the priorities and requests outlined in the Governors executive budget request.

4 **Department Position:** The Adult Mental Health Division (AMHD) provides the following
5 testimony in support with comments on behalf of the Department.

6 **Department Testimony:** The Department is committed to addressing the needs of individuals
7 who live with behavioral health challenges and would benefit from necessary medical
8 treatment when it is in their best interest. Methods to establish authorization to treat are
9 important to ensure the application of those services for those who would benefit from
10 treatment over their objection, including Assisted Community Treatment (ACT). We are
11 committed to supporting the availability and effectiveness of ACT, including working with state
12 agencies and community partners to improve access and implementation.

13 We note that assertive community treatment teams, or ACT Teams, are a national
14 evidence-based practice for those needing intensive place-based mental health services and

1 thus, are referring to Hawaii's assisted community treatment teams as (ACT Teams) in this
2 testimony to differentiate between ACT and ACT Teams, two important mental health
3 modalities. ACT Teams are multidisciplinary teams with a low provider to client ratio that use
4 active and persistent ongoing attempts to engage with individuals, directly provide health and
5 social care, and outreach to individuals at their location, including evenings and weekends.

6 For Section 2, pages 3 and 4, regarding data tracking, the Department will be able to
7 track and publish data if given resources for the development of a data system. It will also
8 require the Judiciary and other sources of relevant data to electronically submit this data to the
9 Department. The Department has developed the BH808.hawaii.gov website that already
10 reports the number of crisis calls received by the Hawaii CARES crisis line, our preferred one
11 stop shop for receiving behavioral health crisis response, and for coordinated and efficient care.
12 Resources needed for the data system also include staff to maintain the system and coordinate
13 between the different involved agencies.

14 For section 2, pages 5-6, regarding response to reports of persons with severe mental
15 illness who need assistance and assessment to determine whether they meet criteria for
16 ACT, the Department can help to respond, with other community providers, through the
17 development of intensive services that focus on community outreach efforts, such as service
18 provided through ACT teams as described above. With funding, the Department could contract
19 this service to a provider(s) who would be responsible for developing ACT Teams. These teams
20 would be available to engage and support community ACT efforts.

21 The Department recognizes that providing intensive community service and
22 coordinating community ACT efforts involves complex design, procedural, training and ongoing
23 oversight activities. Collaborative and coordinated efforts of state agencies, service providers,
24 and community stakeholders are required. We are ready and available to actively participate in
25 this important effort. We are currently working to expand our crisis continuum of care, and to

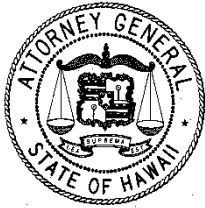
1 improve analyzing and reporting important data metrics to assess the effectiveness of these
2 and ongoing efforts.

3 The Department recognizes that the treating provider of the individual needs to submit
4 the petition to the court because they have the specific information needed regarding care and
5 treatment of the individual. The Department respectfully defers to the Judiciary on items in
6 this bill that impact judicial proceedings and defers to the Department of the Attorney General
7 for legal matters.

8 The Department appreciates the support of the Legislature and the Governor to
9 prioritize mental health, wellness, and recovery and introducing measures this session that
10 encourage all stakeholders to generate solutions and support programs and services with the
11 greatest benefit to those who need care and treatment.

12 **Offered Amendments:** None.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1492, RELATING TO MENTAL HEALTH.

BEFORE THE:

SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES AND ON JUDICIARY

DATE: Monday, February 13, 2023 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 016

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

Chairs San Buenaventura and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to (1) add new sections to chapter 334, Hawaii Revised Statutes (HRS), that require the Department of Health to (A) to track and publish data on responses to mental health crises and (B) take certain actions upon receipt of a report that a mentally ill individual requires assistance, (2) amend section 334-60.5(i), HRS, to permit the family court to order an individual to obtain assisted community treatment (ACT) prior to the dismissal of a petition for involuntary hospitalization, and (3) amend section 334-123, HRS, to require the Department of the Attorney General to assist individuals in filing ACT petitions, which will take retroactive effect starting January 1, 2014.

The Department is concerned that permitting a court to issue an ACT order for an individual in a case brought solely for the purpose of involuntary hospitalization violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and article 1, section 5, of the Constitution of the State of Hawai'i because the individual will have had no warning or notice of the possibility that an ACT order could be issued. Pursuant to section 334-60.2, HRS, a petition for involuntary hospitalization is concerned with the commitment to a psychiatric facility of an imminently dangerous individual who is in need of treatment for mental illness or substance abuse, because that is the only suitable course of action. As such, an involuntary hospitalization petition

under section 334-60.3, HRS, does not require consideration of whether an ACT order is appropriate, which requires consideration of a different set of factors under section 334-121, HRS, that are not needed for involuntary hospitalization. Furthermore, ACT proceedings contemplate the presence of a medical certificate that details a treatment plan for treatment in the community under sections 334-121.5 and 334-123, HRS, as well as the appointment of a guardian ad litem to represent the best interests of the individual under section 334-123.5, HRS. These components of ACT are not required in proceedings for involuntary hospitalization.

To address these concerns, we recommend that the proposed amendment to section 334-60.5(i), HRS, by section 3, on page 6, line 11, to page 7, line 10, be revised to read as follows:

Prior to the dismissal of the petition, the court shall first assess whether the person meets the criteria for assisted community treatment under section 334-121~~[delete page 6, line 14, through page 7, line 10]~~. If the court determines that the criteria for assisted community treatment are present, it shall direct the petitioner to coordinate for the person's care with a provider able to administer assisted community treatment under section 334-127(c) and to file a petition for assisted community treatment, so long as the petitioner and provider agree that the criteria are present and the provider agrees to be responsible for the management and supervision of the person's treatment.

In addition, to prevent the retroactive application of the new paragraph (4) in section 5 at page 11, lines 3 to 9, and to be consistent with the new subsection 334-123(b) at page 8, lines 10-14, we suggest amending the wording of the new paragraph (4) as follows:

- (4) ~~[The]~~ After July 1, 2023, the department of the attorney general shall assist with the preparation and filing of any petition brought pursuant to section 334-123, Hawaii Revised Statutes, and ~~[the]~~ any related court proceedings; provided that if the petitioner is a private provider or ~~[any]~~ other private

individual, the [~~interested party~~] petitioner may decline the assistance.

(Original Ramseyer format deleted for the sake of this example)

The Department respectfully requests that the Committees consider these recommendations.

Thank you for the opportunity to testify.



The Judiciary, State of Hawai'i

**Testimony to the Thirty-Second State Legislature
2023 Regular Session**

Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Monday, February 13, 2023 at 10:30 a.m.
State Capitol, Conference Room 016 & Videoconference

WRITTEN TESTIMONY ONLY

by:

Matthew J. Viola
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 1492, Relating to Mental Health.

Purpose: Requires the Department of Health to respond to reports about persons having severe mental illness and in need of assistance and to assess whether those persons may fulfill the criteria for assisted community treatment. Requires the Department of Health to track and publicly report certain data relating to crisis reports, emergency mental health transports, and court-ordered treatments. Appropriates moneys to the Department of Health for software and data collection and publication. Requires courts, when dismissing an involuntary hospitalization petition for a person, to assess whether the person meets the criteria for assisted community treatment. Requires the Department of the Attorney General to assist in the preparation and filing of certain assisted community treatment petitions and related court proceedings.



Judiciary's Position:

The Judiciary respectfully opposes Section 3 of this bill, which requires courts, when dismissing an involuntary hospitalization petition, to assess whether the subject of the petition meets the criteria for an assisted community treatment (ACT) order and to order treatment if the criteria are met.

We appreciate the intent of this section of the bill to broaden the opportunities to assess individuals who are being discharged into the community from psychiatric facilities for possible ACT orders. This type of assessment is already codified in other parts of the involuntary hospitalization statutes. *See, e.g.*, Hawai'i Revised Statutes (HRS) § 334-59(b) (requiring an ACT assessment if physician or advanced practice registered nurse [APRN] determines that emergency hospitalization is not needed); HRS § 334-60.7(b) (administrator or treating physician may assess individuals for ACT treatment plan when discharge is contemplated).¹

Respectfully, however, we believe that requiring courts to conduct this type of clinical assessment in the context of a separate involuntary hospitalization proceeding has several fundamental problems.

First, the bill requires the court to make an assessment and issue orders based on information and evidence that may not have been presented during a hearing on a petition for involuntary hospitalization.

The criteria for involuntary hospitalizations are different from the criteria for ACT cases. For instance, to sustain an ACT petition, there must be clear and convincing evidence that the subject has a “[m]ental illness that has caused that person to refuse needed and appropriate mental health services in the community; or [a h]istory of lack of adherence to treatment for mental illness or substance abuse that resulted in the Subject becoming dangerous to self or others and that now would predictably result in the person becoming imminently dangerous to self or others[.]” HRS § 334-121. This is not a required element of proof in an involuntary hospitalization case. Therefore there will typically be no evidence in an involuntary hospitalization hearing that would address this ACT criterion.

Similarly, the bill requires the court to designate a mental health facility or program “to take responsibility for coordination of the person’s care and which has voluntarily accepted the designation[.]” Again, this information is not relevant to and therefore not part of the evidence in an involuntary hospitalization proceeding.

¹ We note that SB 1540 (Relating to Rehabilitation) also provides for ACT clinical assessments (and filing of ACT petitions) for defendants in a criminal justice diversion program who do not meet the criteria for involuntary hospitalization. The Judiciary will be supporting SB 1540.



As a result, the court hearing an involuntary hospitalization petition will likely not have the necessary evidence to make the ACT assessment and orders that this bill requires.

Second, the process set forth in Section 3 of the bill bypasses important procedural protections that respondents/defendants are entitled to in any civil proceeding -- especially one that concerns constitutionally protected liberty interests. The bill does not give the subject of the involuntary hospitalization petition proper notice of the ACT proceedings, including the factual basis for any potential ACT orders.² The subject is only given notice (through service of a petition) about the involuntary hospitalization case.

Further, the bill does not provide for the appointment of an attorney or guardian ad litem for the subject. Although the subject would be appointed counsel in the involuntary hospitalization proceeding, that appointment would not carry over to the ACT proceedings. In fact, subjects in ACT cases are no longer entitled to court appointed counsel. They are, however, entitled to the appointment of a guardian ad litem (HRS § 334-123.5), but this bill does not provide for the appointment of a guardian ad litem before ACT orders are entered.

Third, the bill does not provide important substantive safeguards that are codified in the ACT statutes. For example, in a proceeding initiated under the ACT statutes, a psychiatrist or advanced practice registered nurse must testify in person about “the facts which support the allegation that the subject meets all the criteria for assisted community treatment, provide a written treatment plan . . . and the rationale for the recommended treatment[.]” HRS § 334-126(g). Section 3 of SB 1492, in contrast, does not require a psychiatrist or APRN to provide the rationale for the recommended community-based treatment; in fact, it does not even require submission of a written treatment plan until 10 days after the order for assisted community treatment is entered.

The Judiciary respectfully submits that the conflation of ACT proceedings into a dismissed involuntary hospitalization proceeding may impose obligations on courts that are inconsistent with their role as neutral arbiters and may undermine important procedural and substantive rights of unrepresented individuals.

We therefore respectfully request that Section 3 of SB 1492 be stricken.

Thank you for the opportunity to testify on this measure.

² HRS § 334-123 sets forth strict content requirements for ACT petitions.



SB1442 Mental Health Diversion to Crisis Beds

COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Monday, Feb. 13, 2023: 10:30 : Room 016 Videoconference

Hawaii Substance Abuse Coalition supports SB1442

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 services.

HSAC strongly supports diversion alternatives for people subject to exclusion from charges or for violating their probation due to their mental health disease. It's time for Hawaii to expand our criminal justice diversion programs. The diversions include screening and evaluations for involuntary hospitalization or assisted community treatment. We also need more behavioral health crisis centers so that more diversions can happen in our justice systems.

- Often people who have severe substance use disorders, or who are mentally impaired that are frequently arrested are unsheltered homeless.
- It requires a lot of time of police officers who have to arrest them even if the crimes are misdemeanors. This is how jails become overcrowded because of this population.
- The alternative is a danger to public safety when criminal defendants, who could qualify for commitment due to severe mental health issues, are released back into the community.

Expanding the qualifying offenses will allow more people to be diverted and requiring screening or a mental health evaluation and treatment will enable a faster resolution of their cases and a sooner realized benefit from treatment and support for their mental health. Such treatment can reduce or eliminate their involvement with the criminal justice system.

By focusing on people who are reoccurring in the justice system, HSAC strongly supports diversion strategies to help people receive effective mental health treatment and/or substance abuse treatment. Providing treatment and supports will help people with mental health issues to better access housing, employment and possibly get off the street entirely. This is a clear path to help end homelessness.

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

SB-1492

Submitted on: 2/9/2023 5:53:21 PM

Testimony for HHS on 2/13/2023 10:30:00 AM

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

Comments:

We think having the Health Director file petitions along with the assistance of the Attorney General is a good idea. Many families do not know how to navigate the system and the expertise of the DOH and AG will provide valuable assistance. We have no objections to a Court conducting an assessment for suitability for the ACT program.

CARES

COMMUNITY ADVOCACY RESEARCH EDUCATION SERVICES

SB 1492

Aloha Chair, Vice Chair & the Committee of JDC & HHS,

LATE

to

CARES testifies in strong support of SB 1492.

the SENATE
committees
on HHS &
JDC

The purpose of this act is to improve the state's mental health resources for assisted community treatment and involuntary commitments. There is a need to integrate all the medical records, reports & petitions . The AG will work with the department to petition.

The Hawaii
State
Legislature

from

Zhizi Xiong
(Angela
Melody
Young)
Creator

CARES offers comments using this framework from Kass Public Health Ethics, that involuntary commitment restricts autonomy and raises other ethical concerns. "Harms include: stigmatizing and punitive experiences; social isolation; eroded patient self-determination; limited or no provision of Opioid Use Disorder OUD medications; and long-term overdose risk." [1] Some people may be completely allergic to medications and can only handle plant therapies. And if they are forced to take medication, it can cause extreme complications and it would be a liability. Solitary confinement in facilities can also exacerbate mental illness. Solitary confinement can cause extreme suffering, worsen symptoms, and feel like torture. [2]

However, there are extreme circumstances when involuntary commitment can be utilized in an ethically responsible way, such as for murderers or people who like to torture & kill animals.

Blessings,

808-724-0047

alohadivinedesign@gmail.com




ANGELA MELODY YOUNG





CARES

Works cited

1. Evans, Elizabeth A., et al. "Perceived Benefits and Harms of Involuntary Civil Commitment for Opioid Use Disorder." *Journal of Law, Medicine & Ethics*, vol. 48, no. 4, 2020, pp. 718–734, www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/perceived-benefits-and-harms-of-involuntary-civil-commitment-for-opioid-use-disorder/2E9586FA6087146454FE41848B610F58, <https://doi.org/10.1177/1073110520979382>. Accessed 5 Feb. 2021.
 2. "Solitary Confinement | NAMI: National Alliance on Mental Illness." www.nami.org, www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Solitary-Confinement#:~:text=Solitary%20confinement%20and%20other%20forms.
- 

TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF SB 1492

I write in strong support of SB 1492

While I write as an individual, I have served as president of the Hawaii State Bar Association, Institute for Human Services (IHS) and Hale Kipa Youth Services.

This bill has many changes that can help address the treatment needs for our residents with severe mental illness. Many are homeless, living on our streets, with no one to assist them. Due to aspects of their mental illness, they often resist treatment or intervention. So they are stuck in a revolving door of emergency rooms, police and the streets, with no effective intervention to treat their underlying mental illness.

This bill can help at many levels, by requiring DOH response to reports about persons having severe mental illness, assessment of whether these persons may fulfill the criteria for assisted community treatment, and tracking/reporting of data relating to crisis reports, emergency mental health transports, and court-ordered treatments. This can help us better understand the magnitude of the problem both for individuals and the community, assess better early intervention points, and create data to assist in better solutions.

I also support the bill's provision that courts, when dismissing an involuntary hospitalization petition for a person, should assess whether the person meets the criteria for assisted community treatment. This is a logical alternative treatment opportunity, and allows for a prompt hearing regarding potential need for treatment in a less restrictive setting.

Finally, I think it's very important that the Department of the Attorney General (on behalf of DOH) assist in the preparation and filing of assisted community treatment petitions and related court proceedings. The health care professionals will need to provide the substantive health information about the individual and certify that the statutory criteria are met, but they should not be the ones to have to shoulder the responsibility of court filings and proceedings. Legal counsel is needed to prepare a petition that comports with statutory standards and procedures, and to assure that requisite notice to interested parties is provided, and compliance with other rules. The DOH/AG are responsible for preparing and filing petitions for involuntary commitment, because there is community need for protections for persons suffering from severe mental illness that warrants commitment. Similarly, there is a community need for protections for persons suffering from severe mental illness that warrants an order for assisted community treatment. In both instances, the individual needs to be protected from their own potential harmful impulses, as does the community.

Thank you for your consideration of my testimony and helping protect the welfare of our most vulnerable residents.

Ellen Godbey Carson
Honolulu, Hawaii

SB-1492

Submitted on: 2/12/2023 8:01:37 AM

Testimony for HHS on 2/13/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ktreese Rodriguez	Individual	Support	Written Testimony Only

Comments:

I strongly support SB1492.

LATE

SB-1492

Submitted on: 2/12/2023 3:23:06 PM

Testimony for HHS on 2/13/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mary Pat Waterhouse	Individual	Support	Written Testimony Only

Comments:

With two family members suffering from serious mental illness I fully support this bill.

SB-1492

Submitted on: 2/12/2023 10:06:44 PM

Testimony for HHS on 2/13/2023 10:30:00 AM



Submitted By	Organization	Testifier Position	Testify
Elizabeth Bolton	Individual	Support	Written Testimony Only

Comments:

Dear Chairs San Buenaventura and Rhoads and Vice Chairs Aquino and Gabbard,

My name is Elizabeth Bolton. I am a resident of the City and County of Honolulu, State of Hawai'i who comes from a family that has been affected by mental illness. I am testifying in strong support of Senate Bill No. 1492 (SB 1492).

Prior to the COVID-19 pandemic, in 2018-2019, 3.5% of adults in Hawaii (approximately 36,000 people) reported an unmet need for mental health treatment in the past year. Unmet need refers to a person having a perceived or recommended need for mental health treatment or counseling, but not receiving care. Among these adults in Hawaii who reported an unmet need for mental health treatment in the past year, 25.9% (approximately 9,000 people) did not receive treatment because of cost. In 2020, 5.5% of children ages 3-17 in Hawaii received mental health care in the past year; many children with mental health needs do not receive mental health care.

SB 1492 requires the Department of Health to respond to reports about persons having severe mental illness and in need of assistance and to assess whether those persons can fulfill the criteria for assisted community treatment. SB 1492 would also require the Department of Health to track and publicly report certain data relating to crisis reports, emergency mental health transports, and court-ordered treatments.

Finally, SB 1492 would appropriate certain moneys to the Department of Health for software and data collection and publication and require courts, when dismissing an involuntary hospitalization petition for a person, to assess whether the person meets the criteria for assisted community treatment.

Mental illness is a significant problem in our community. We need better information and data about crisis reports, and whether court-ordered treatments are a successful way to help this problem. Courts are able to assess whether mentally ill individuals can fulfill the criteria for assisted community treatment, which would be another way to help these people

More funding is needed for this important problem, which affects adults and children alike.

I strongly support, and urge you to pass, HB 1492 and help to tackle the issues presented by mental illness in our community. Mahalo for you time and attention to this matter.

Sincerely,

**Elizabeth Bolton
Kailua Resident**