

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in OPPOSITION to H.B. 1155
RELATING TO ASSISTED COMMUNITY TREATMENT

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date, Time and Room: Friday, February 3, 2023 at 9:30 a.m. in Room 329/VIDEO

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department of Health (“Department”) respectfully opposes this
3 measure and offers comments.

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

6 The purpose of this bill is to amend Hawaii Revised Statutes §334-121.5, §334-123,
7 §334-124, §334-126, §334-127, §334-131, §334-133.

8 The Department is committed to addressing the needs of individuals who live with
9 behavioral health issues and need necessary medical treatment when it is in their best interest.
10 Assisted Community Treatment (ACT) is an important method to ensure the application of
11 those services for those who would benefit from treatment over their objection. The
12 Department is committed to supporting the availability and effectiveness of ACT, including
13 working with state agencies and community partners to improve access and implementation.

14 We support expedited processes for ACT petitioning procedures including generating
15 final orders within thirty days of filing, use of online hearings, and stipulated orders without

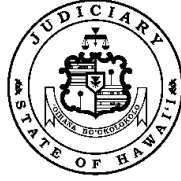
1 undergoing an evidentiary hearing. Submitting a report on the number of requests for ACT
2 petitions submitted to the Director of Health for the 2025 legislative session is doable within
3 our current staffing and resources.

4 The Department opposes the Director of Health for filing and preparing petitions for
5 other institutions. We strongly believe that the provider of care needs to prepare and present
6 information for a petition rather than a third-party. The provider has specific patient health
7 information that needs to be conveyed to the court. By introducing a third party into the
8 process, it will be inefficient, lead to increased costs by the state for the third party review, and
9 could lead to misclarifications in the petitions.

10 The Department is committed to supporting affected stakeholders with technical
11 assistance and trainings and believe this would better lead to the desired outcomes of this bill.
12 Please see H.B. 885 and S.B. 987 for support of these activities.

13 **Offered Amendments:** Strikeout underlined additions in language on page 1, line 17; page 2,
14 lines 1-2 and lines 11-12 and 14-20; page 3, lines 1-2; page 5, lines 1-2; and page 10, lines 5-6,
15 and line 14.

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



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Health & Homelessness

Representative Della Au Bellati, Chair

Representative Jenna Takenouchi, Vice Chair

Friday, February 3, 2023 at 9:30 a.m.

State Capitol, Conference Room 329 & Videoconference

by

Matthew J. Viola

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

Bill No. and Title: House Bill No. 1155, Relating to Assisted Community Treatment.

Purpose: Permits interested parties to request the director of health to file an assisted community treatment petition on behalf of the interested party. Requires final orders for a petition to be filed within thirty days of the date an assisted community treatment petition is filed. Permits the family court to use online hearings for assisted community treatment petitions. Permits the subject of a petition to stipulate to the proposed order and for the court to enter the stipulated order without an evidentiary hearing. Requires the department of health to report to the legislature on the number of requests for petitions submitted to the director of health.

Judiciary's Position:

The Judiciary takes no position with respect to House Bill 1155, but respectfully offers the following comments:

- 1. Section 3 of the bill requires courts to “endeavor to file a final order on an assisted community treatment (ACT) petition within thirty days of the date the petition is filed” unless “exigent circumstances exist[.]”**

We fully recognize the need to hear and decide ACT petitions expeditiously. While hearings are set as soon as possible, as the statute currently already requires (HRS § 334-124), entering final orders within thirty days may not always be achievable.



Guardians ad litem (GAL) are appointed immediately upon filing of a petition. An initial hearing on the petition is typically set within a couple of weeks. If a contested hearing is requested and the parties indicate they are prepared to proceed with an evidentiary hearing, the hearing can be set within a month of the initial hearing. That time frame, however, is not always possible or advisable. For example, at times the petitioner needs more time to effect proper service on the subject or interested parties; sometimes the petitioner, the petitioner's attorney, the GAL, the psychiatrist who has assessed the subject, or other important witnesses are not all available on relatively short notice. At times, the subject is incarcerated or difficult for the GAL to contact.

Further, the proposed language allowing more than thirty days for an order to be entered is ambiguous. Specifically, what "exigent circumstances" means in this context is unclear. If this provision remains, we respectfully suggest replacing "exigent circumstances exist" (p.5, lines 7-8) with "good cause exists".

Finally, what happens if the thirty day deadline is not met is unstated. If the intent is that the petition be dismissed, we respectfully submit that it would undermine the goal of expediting these cases.

We respectfully suggest the deletion of language on page 5, lines 7 to 9.

~~Unless exigent circumstances exist, the court shall endeavor to file a final order on the petition within thirty days of the date the petition is filed.~~

2. Section 5 of the bill adds a provision to HRS § 334-127 authorizing the court to enter ACT orders based on a stipulation of the subject (p. 9, line 11-20).

The Judiciary has concerns about this provision.

First, given the constitutional liberty interests at issue in ACT cases, any stipulation to an order must be knowing and voluntary. Allowing subjects of these provisions to agree to ACT orders presumes that they have the capacity to do so knowingly and voluntarily. One of the statutory elements that must be proven by *clear and convincing evidence* in ACT cases is that the subject's "current mental status or the nature of the disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with the recommended treatment[.]" HRS § 334-121(2). This statutory requirement may effectively preclude a finding that the subject knowingly and voluntarily stipulated to the proposed order, which requires the subject to comply with specific treatment.

Further, while the proposed provision allows the court-appointed GAL to object to the entry of an ACT order without an evidentiary hearing, it should be noted that the role of the GAL



is to represent the best interests of the subject; they are not the subject's lawyer and cannot give the subject legal advice. The provision in the proposed statute permitting the GAL to object to a stipulated order would place GALs in a difficult ethical position.

We respectfully suggest these changes to this section on page 9, lines 11 to 20:

(e) The subject may stipulate to a petition for assisted
12 community treatment if the subject is provided a proposed order
13 for community assisted treatment, including the proposed
14 treatment plan, [~~either at the time the petition is filed or~~]
15 prior to entry of the court's order on the petition. If the
16 subject stipulates to the proposed order, including the proposed
17 treatment plan, by signing the proposed order, then the court
18 may enter the stipulated order without undergoing an evidentiary
19 hearing, unless the guardian ad litem or any other party objects to entry of an
20 order without an evidentiary hearing.”

3. Sections 1, 2 and 7 allow interested parties to request the Director of the Department of Health to file ACT petitions.

The Judiciary takes no position with respect to these provisions, but wishes to note that if the result of these provisions is to substantially increase the number of ACT petitions filed in Family Court, we may require additional resources, including judge positions, to expeditiously handle the increased workload. In addition, a GAL must be appointed in each ACT case, unless a guardian has already been appointed for the subject. Currently, the pool of people who are willing to accept GAL appointments in ACT cases is small. We are concerned that there may not be enough qualified GALs if there is a significant increase in the number of ACT cases that are filed.

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

HB-1155

Submitted on: 2/1/2023 12:19:09 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Comments	Remotely Via Zoom

Comments:

We think having the Health Director file petitions is a good idea. Many families do not know how to navigate the system and the expertise of the DOH will provide valuable assistance. The stipulated orders and online hearings are also good ideas.



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

TO: Honorable Rep. Della Au Belatti
Chair, House Committee on Health and Homelessness

FROM: Connie Mitchell, Executive Director
IHS, The Institute for Human Services, Inc.

RE: HB1155 – RELATING TO ASSISTED COMMUNITY TREATMENT

HEARING: February 3, 2023 at 9:30 AM

POSITION: IHS strongly supports the passing of HB 1155

As the homeless service provider that has had the most experience filing petitions for assisted community treatment in the State of Hawaii, the Institute for Human Service is **in strong support** of this bill to expand capacity for addressing the needs of mentally ill or substance abusing individuals who have lost their decisional capacity and refusing needed mental health treatment to be provided such treatment.

This bill calls upon the Department of Health to track petitions and guardianships filed for the purpose of facilitating behavioral health treatment to coordinate continued treatment of persons who ordinarily cycle through arrests, emergency care at hospitals, adjudication in the courts and detention in our jails. Many of these individuals have also remained homeless on the streets and other places not meant for human habitation for years.

The Department of Health could begin by establishing a database of said information to help providers in our systems of care (emergency departments, jails, homeless services providers, behavioral health case managers, healthplans) deliver safe, coordinated care to some of our most vulnerable homeless individuals. In the past year, our team at IHS has witnessed the deaths of three individuals who had remained on the streets untreated for many years, and in one case as a woman who had wandered the streets of Honolulu for over twenty years.

While requests could be made of the Department of Health for such assistance in filing a petition for guardianship or assisted community treatment, the legal work of petitioning could be referred out to agencies contracted to do so or contracted out by the AMHD if funding were provided to them.

The coordinating function is the key area that the Department of Health could contribute most significantly.

We recommend that the following edit be added to this bill to integrate the intent in HB950 to extend the duration of an assisted community treatment order to two years from one year with a streamlined court process.



To streamline the legal process of continuing assisted community treatment and to ensure maximum benefit to the subject of such and order, IHS suggests the following amendments in red to the current draft of HB1155:

§334-133 Petition for additional period of treatment; hearing. (a) Prior to the expiration of the period of assisted community treatment ordered by the family court, any interested party may file a *motion [petition] in the existing proceeding* with the family court for an order of continued assisted community treatment. The *motion [petition]* shall be *served on all persons who have entered an appearance in the proceeding. [filed and notice provided in the same manner as under sections 334-123 and 334-125.]* *If the motion is accompanied by a certificate of a licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization who has examined the subject of the petition within twenty calendar days prior to the filing of the motion, and who attests under penalties of perjury that the criteria in section 334-121 continue to be present, and there is no objection filed within 10 days of the filing of the motion, the Court may determine the motion based on the record before it and enter an order as provided in section 334-127.*

(b) if an objection is filed to the motion within 10 days with any evidence contesting the certificate in subsection (1), or if the motion is not accompanied by a certificate as described in subsection (1), then the family court shall hold a hearing on the motion [petition] and make its decision in the same manner provided for a petition under sections 334-[123] 124 to 334-127. The family court may order the continued assisted community treatment for not more than two [one] years after the date of the hearing pursuant to this section if the court finds that the criteria for assisted community treatment continue to exist and are likely to continue beyond one hundred eighty days.

(c) Nothing in this section shall preclude the subject's stipulation to the continuance [of] an existing court order. This section shall be in addition to the provisions on the objection to discharge.

Thank you for the opportunity to testify.



TESTIMONY OF ELLEN GODBEY CARSON ON HB 1155

I write in strong support of HB 1155.

While I write as an individual, I have served as President of Hawaii Women Lawyers, the Hawaii State Bar Association, and the Institute for Human Services. The major part of my legal career and thousands of hours of volunteer community work have been spent seeking to protect constitutional rights and the rights of vulnerable persons.

We only need to walk down our urban streets to see that we are failing to protect persons with severe mental illness. They live on our streets, rotating between the ER, jail, and the streets again in a never-ending downward cycle. Over 100 of our homeless residents die on our streets each year, at an average age of only 54. In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street without effective treatment. Many of them are so mentally ill they lack decision-making capability for life-saving medication and self-preservation.

I support HB 1155 because it will make our Assisted Community Treatment (“ACT”) law more effective for those most in need, ie, those with very serious mental illness and/or severe substance abuse, who lack decisional authority. HB 1155 will increase the likelihood that these persons will receive early intervention and appropriate care and treatment in the least restrictive setting.

We have miracles of modern medicine that can treat even the most severe mental illnesses. But treatment requires either actual consent or legal procedures for ordering appropriate treatment. We owe it to these individuals to provide them life-saving treatment to stabilize them and help restore their lucidity when they lack their own decision-making authority.

HB 1155 will help us better address these needs in the following ways:

- *Requires ACT orders to be issued under HRS 334-124 within 30 days of petition, absent exigent circumstances;*
- *Encourages greater use of online/electronic hearings and remote testimony to accommodate persons living on the street and the providers caring for them by explicitly encouraging this in the ACT law;*
- *Provides that where an ACT petition is accompanied by a proposed ACT order and treatment plan, and neither the subject nor the subject’s guardian ad litem object to the proposed ACT order and treatment plan, the court can enter the ACT order as a stipulated order, absent exigent circumstances;*

- *Authorizes any psychiatric facility or hospital to request the DOH director to file and pursue a petition for ACT, and if the standards for ACT are met on the face of the petition, the director shall file and pursue the petition as soon as possible;*
- *Allows interested persons to request an ACT petition to be filed expeditiously by the DOH Director, supported by information provided by the interested person.*

While amendments in recent years have improved our ACT law, the ACT process still takes too long, causing needless suffering, public costs, tragic circumstances, and even death. This bill can make further improvements to save lives, and potentially millions of dollars in health care costs, by stopping the revolving door for homeless individuals who need effective treatment that can be provided by ACT.

Abandoning these individuals to their “freedom” to live on the streets while severely disabled is a death sentence for many. They are someone’s son or daughter, parent or loved one, and they deserve the same prompt curative treatment as would be provided to those with other life-threatening medical conditions.

This bill relies on the due process protections already embedded in the ACT law, similar to many other laws around our nation, to strike an appropriate balance between the individuals’ rights of liberty and the need to help to help treat severely mentally ill persons to help them stabilize and regain their decisional capacity. In so doing, we can help avoid the very real dangers of irreversible disability and death that these severely ill persons face if they are left on their own on the streets.

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

Ellen Godbey Carson
Honolulu, Hawaii

HB-1155

Submitted on: 2/2/2023 8:46:57 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marya Grambs	Individual	Support	Written Testimony Only

Comments:

I am writing in support of this bill. Assisted Community Treatment (ACT) provides for medication as well as wrap-around case management support services that can stabilize the person and get them on a path to a healthier life. This is for individuals who have demonstrated that they are unable to care for themselves and unable to make informed decisions as to treatment - because they do not understand that they are ill and in need of treatment - and who have cycled in and out of hospitals, jail, and streets, living in deplorable conditions. ACT orders save lives.

HB-1155

Submitted on: 2/3/2023 7:18:43 AM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

I am in strong opposition to the portions of HB1155 which allow for video hearings especially where all parties are not represented by counsel or another representative party that is present solely to represent the interests of the subject of the petition. I have sat through dozens of bail hearings where video is used and it is difficult to communicate and hear what is happening in the process, especially when the subject party has any type of impairment. I also oppose the portion of the bill which releases the need for an evidentiary hearing if the subject party stipulates to the petition for assisted community treatment. This is overreaching, especially in a situation where the petition and subsequent order is based on a proposed decisional impairment of the subject individual.

Respectfully-

Raelyn Reyno Yeomans