

Measure: SB 961, SD2, HD2, Relating to Mental Health
Committee: House Finance Committee

Date and Time: April 2, 2015, 3:30 p.m.

Organization: Waipahu Aloha Clubhouse Advisory Board
Testifier: Mary Pat Waterhouse, Advisory Board Member

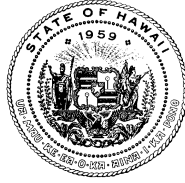
Chair Luke and Members of the Committee:

I strongly support SB 961 SB2 HD2.

The original law was passed over 12 years ago but it wasn't used because of major problems. To correct these flaws, major changes were made to the law 2 years ago. The purpose of the law that passed in 2013 and the one that we are trying to pass today have the same objectives, that is to stabilize psychotic, seriously mentally ill and/or substance abuse individuals who cycle between the streets, hospitals and/or correctional facilities and to permit the Family Court request that these individuals receive treatment in the community. This process to support our at risk community members has been validated by the findings in 9 studies that have shown significant decreases of between a 50% to 75% in the number of days these individuals are hospitalized, incarcerated, and are homeless.

The changes that have been made to the bill this year have been in response to a case that was presented at family court last year and in response to working with the various stakeholders during this session and previously.

Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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LATE

**Testimony in SUPPORT of SB 961 SD2, HD2
RELATING TO MENTAL HEALTH TREATMENT**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

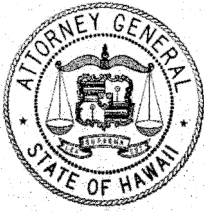
Hearing Date: April 2, 2015 Room Number: 308
3:30 p.m.

1 **Fiscal Implications:** Indeterminate.

2 **Department Testimony:** The Department of Health (DOH) strongly supports SB 961 SD2,
3 HD2. The proposed bill, as amended, is likely to improve the implementation of Assisted
4 Community Treatment (ACT).

5 Among other things, the Assisted Community Treatment statute mandates that DOH
6 gather information from treating providers related to MH-1s and hospitalization of individuals
7 who are under an order to treat (OTT) and submit an annual report of its findings and
8 recommendations to the Legislature. The DOH fully supports this requirement and will submit a
9 written report no later than twenty days prior to the convening of every regular legislative
10 session.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 961, S.D. 2, H.D. 2, RELATING TO MENTAL HEALTH TREATMENT.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

LATE

DATE: Thursday, April 2, 2015

TIME: 3:30 p.m.

LOCATION: State Capitol, Room 308

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

Chair Luke and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and offers suggested amendments to address concerns raised in prior testimony.

This bill amends several provisions in chapter 334, Hawaii Revised Statutes (HRS), relating to Assisted Community Treatment, with the goal of reducing the hospitalization and the incarceration of persons with mental illness. This housekeeping measure attempts to modify the procedures relating to petitions for Assisted Community Treatment by: (1) removing the ten-day time limit for setting a hearing date; (2) not requiring notice of continuances to be served on defaulted parties; (3) allowing the court to appoint a guardian ad litem, where warranted; (4) specifying provisions relating to the appointment of a public defender or other court-appointed attorney; (5) removing redundant provisions relating to the examination of the subject of the petition; and (6) requiring treating providers to provide information to the Department of Health for statistical purposes.

The Department of the Attorney General recommends that the amendments below be included in this bill to address the concerns raised by the Office of the Public Defender in prior testimony, relating to the appointment of counsel. Starting with page 6, line 1, subsection (f) should read as follows:

~~“(f) [The subject of the petition need not, but may, be represented by an attorney. If the subject desires an attorney and is indigent, or if the family court determines that the legal or factual issues raised are of such complexity that the assistance of an attorney is necessary for an adequate presentation of the merits or that the subject of the petition is~~

~~unable to speak for the subject's self, the family court shall order the appointment of a public defender or other attorney to represent the subject and continue the hearing for not more than seven days.]~~ Notwithstanding chapter 802, relating to the appointment of counsel, the public defender or other court-appointed counsel shall represent the subject upon filing of the petition. A copy of the petition shall be served upon the public defender by the petitioner. The public defender or court-appointed counsel may withdraw upon a showing that the subject is not indigent. If the subject does not desire representation, the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition. Nothing in this subsection shall be construed to:

- (1) Require the subject of the petition to accept legal representation by the public defender or other court-appointed counsel; or
- (2) Prevent the subject of the petition from obtaining the subject's own legal counsel to represent them in any proceeding."

Also, we recommend adding two new sections to this bill amending chapter 802, HRS, to read as follows:

SECTION . Section 802-1, Hawaii Revised Statutes, is amended to read as follows:

“§802-1 Right to representation by public defender or other appointed counsel. (a)

Any indigent person who is{;}:

- (1) Arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which the person may be or is subject to the provisions of chapter 571;
- (2) Threatened by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility;
- (3) The subject of a petition for [~~involuntary outpatient treatment~~] assisted community treatment under chapter 334; or
- (4) The subject of a petition for involuntary medical treatment under chapter 353{;} shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

(b) ~~[The]~~ Except as provided in section 334-126(f), the appearance of a public defender in all judicial proceedings shall be subject to court approval.

(c) The appearance of a public defender in all hearings before the Hawaii paroling authority or other administrative body or agency shall be subject to the approval of the chairperson of the Hawaii paroling authority or the administrative head of the body or agency involved.”

SECTION . Section 802-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[When]~~ Except as provided in section 334-126(f), when it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any. If conflicting interests exist, or if the interests of justice require, the court may appoint private counsel, who shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to subsection (b). All expenses and fees shall be ordered by the court. Duly ordered payment shall be made upon vouchers approved by the director of finance and warrants drawn by the comptroller.”

These amendments, which incorporate the Judiciary’s suggestions, take into account the special circumstances involved in petitions for assisted community treatment and provide more protections than the Constitution requires.

We respectfully ask this Committee to pass this measure with the suggested modifications.