

JAN 19 2012

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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

**PART I**

1  
2 SECTION 1. Section 334-59, Hawaii Revised Statutes, is  
3 amended by amending subsections (a) and (b) to read as follows:

4 "(a) Initiation of proceedings. An emergency admission  
5 may be initiated as follows:

6 (1) If a [~~police~~] law enforcement officer has reason to  
7 believe that a person is imminently dangerous to self  
8 or others, or is gravely disabled, or is obviously  
9 ill, the officer shall call for assistance from the  
10 mental health emergency workers designated by the  
11 director. Upon determination by the mental health  
12 emergency workers that the person is imminently  
13 dangerous to self or others, or is gravely disabled,  
14 or is obviously ill, the person shall be transported  
15 by ambulance or other suitable means, to a licensed  
16 psychiatric facility for further evaluation and  
17 possible emergency hospitalization. A [~~police~~] law  
18 enforcement officer may also take into custody and



1 transport to any facility designated by the director  
2 any person threatening or attempting suicide. The  
3 officer shall make application for the examination,  
4 observation, and diagnosis of the person in custody.  
5 The application shall state or shall be accompanied by  
6 a statement of the circumstances under which the  
7 person was taken into custody and the reasons therefor  
8 which shall be transmitted with the person to a  
9 physician or psychologist at the facility.

10 (2) Upon written or oral application of any licensed  
11 physician, psychologist, attorney, member of the  
12 clergy, health or social service professional, or any  
13 state or county employee in the course of employment,  
14 a judge may issue an ex parte order orally, but shall  
15 reduce the order to writing by the close of the next  
16 court day following the application, stating that  
17 there is probable cause to believe the person is  
18 mentally ill or suffering from substance abuse, is  
19 imminently dangerous to self or others, or is gravely  
20 disabled, or is obviously ill, and in need of care or  
21 treatment, or both, giving the findings on which the  
22 conclusion is based, and directing that a [~~police~~] law



1           enforcement officer or other suitable individual take  
2           the person into custody and deliver the person to the  
3           nearest facility designated by the director for  
4           emergency examination and treatment. The ex parte  
5           order shall be made a part of the patient's clinical  
6           record. If the application is oral, the person making  
7           the application shall reduce the application to  
8           writing and shall submit the same by noon of the next  
9           court day to the judge who issued the oral ex parte  
10          order. The written application shall be executed  
11          subject to the penalties of perjury but need not be  
12          sworn to before a notary public.

13          (3) Any interested person may file a written petition for  
14          emergency admission alleging that a person located in  
15          the county meets the criteria for commitment to a  
16          psychiatric facility. The petition for emergency  
17          admission shall be executed subject to the penalties  
18          of perjury but need not be sworn to before a notary  
19          public. The petition shall state with particularity  
20          any facts personally known to the petitioner that  
21          establish probable cause to believe that the person  
22          sought to be admitted on an emergency basis is



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1 imminently dangerous to self or others, or is gravely  
2 disabled, or is obviously ill. The petition may be  
3 accompanied by any relevant information, including  
4 medical records, arrest records, or a certificate from  
5 a licensed physician or psychologist stating why the  
6 person meets the criteria for emergency admission.  
7 When a petition for emergency admission is filed, the  
8 petitioner shall appear before a judge in the county  
9 where the subject of the petition is located. The  
10 judge shall conduct an ex parte hearing to determine  
11 if there is probable cause to believe that the subject  
12 of the petition meets the criteria for involuntary  
13 admission. Upon a finding of probable cause that the  
14 subject of the petition is mentally ill or suffering  
15 from substance abuse, is imminently dangerous to self  
16 or others, or is gravely disabled, or is obviously  
17 ill, and in need of care or treatment, or both, the  
18 judge shall issue a written order, giving the findings  
19 on which the probable cause is based and directing a  
20 law enforcement officer or other suitable individual  
21 to take the person into custody and deliver the person  
22 to the nearest facility designated by the director for



1           emergency examination and treatment. The ex parte  
2           order shall be made a part of the patient's clinical  
3           record.

4       ~~(3)~~ (4) Any licensed physician, physician assistant, or  
5       psychologist who has examined a person and has reason  
6       to believe the person is:

7           (A) Mentally ill or suffering from substance abuse;

8           (B) Imminently dangerous to self or others, or is  
9           gravely disabled, or is obviously ill; and

10          (C) In need of care or treatment;

11       may direct transportation, by ambulance or other  
12       suitable means, to a licensed psychiatric facility for  
13       further evaluation and possible emergency  
14       hospitalization. A licensed physician or physician  
15       assistant may administer treatment as is medically  
16       necessary, for the person's safe transportation. A  
17       licensed psychologist may administer treatment as is  
18       psychologically necessary.

19       (b) Emergency examination. A patient who is delivered for  
20       emergency examination and treatment to a facility designated by  
21       the director shall be examined by a licensed physician without  
22       unnecessary delay, and may be given such treatment as is



1 indicated by good medical practice. [~~A psychiatrist or~~  
2 ~~psychologist may further~~] If the licensed physician, physician  
3 assistant, or psychologist who has directed transportation of a  
4 person to a licensed psychiatric facility for further evaluation  
5 and possible emergency hospitalization is not an employee or  
6 agent of the licensed psychiatric facility, a psychiatrist or  
7 psychologist at the licensed psychiatric facility shall  
8 independently examine the patient to diagnose the presence or  
9 absence of a mental disorder, assess the risk that the patient  
10 may be dangerous to self or others, or is gravely disabled, or  
11 is obviously ill, and assess whether or not the patient needs to  
12 be hospitalized."

13 SECTION 2. Section 334-60.5, Hawaii Revised Statutes, is  
14 amended by amending subsection (i) to read as follows:

15 "(i) If after hearing all relevant evidence, including the  
16 result of any diagnostic examination ordered by the court, the  
17 court finds that an individual is not a person requiring  
18 medical, psychiatric, psychological, or other rehabilitative  
19 treatment or supervision, the court shall order that the  
20 individual be discharged if the individual has been hospitalized  
21 prior to the hearing. If the court finds that the criteria for  
22 involuntary hospitalization under section 334-60.2(1) has been



1 met beyond a reasonable doubt and that the criteria under  
2 sections 334-60.2(2) and 334-60.2(3) have been met by clear and  
3 convincing evidence, the court may issue an order to any  
4 [~~police~~] law enforcement officer to deliver the subject to a  
5 facility that has agreed to admit the subject as an involuntary  
6 patient, or if the subject is already a patient in a psychiatric  
7 facility, authorize the facility to retain the patient for  
8 treatment for a period of ninety days unless sooner discharged.  
9 An order of commitment shall specify which of those persons  
10 served with notice pursuant to section 334-60.4, together with  
11 such other persons as the court may designate, shall be entitled  
12 to receive any subsequent notice of intent to discharge,  
13 transfer, or recommit."

14 **PART II**

15 SECTION 3. (a) The department of health, in cooperation  
16 with licensed psychiatric facilities, shall establish a two year  
17 crisis response pilot program in a county with a population  
18 greater than five hundred thousand to provide integrated crisis  
19 response and involuntary treatment to persons who are imminently  
20 dangerous to self or others or gravely disabled.

21 (b) The department shall establish designated crisis  
22 responders who are authorized to conduct investigations and



- 1 detain persons up to seventy-two hours in the proper facility.  
2 A designated crisis responder shall receive training provided by  
3 the department and be either a:
- 4 (1) Psychiatrist licensed in accordance with chapter 453,  
5 Hawaii Revised Statutes;
  - 6 (2) Advanced practice registered nurse licensed in  
7 accordance with chapter 457, Hawaii Revised Statutes;
  - 8 (3) Psychologist licensed in accordance with chapter 465,  
9 Hawaii Revised Statutes; or
  - 10 (4) Licensed clinical social worker licensed in accordance  
11 with chapter 467E, Hawaii Revised Statutes.

12 SECTION 4. As used in this part:

13 "Court" means any duly constituted court and includes  
14 proceedings and hearings of per diem judges as authorized by  
15 law.

16 "Dangerous to others" means likely to do substantial  
17 physical or emotional injury on another, as evidenced by a  
18 recent act, attempt or threat.

19 "Dangerous to self" means the person recently has  
20 threatened or attempted suicide or serious bodily harm; or the  
21 person recently has behaved in such a manner as to indicate that  
22 the person is unable, without supervision and the assistance of





1 others, to satisfy the need for nourishment, essential medical  
2 care, shelter or self-protection, so that it is probable that  
3 death, substantial bodily injury, or serious physical  
4 debilitation or disease will result unless adequate treatment is  
5 afforded.

6 "Department" means the department of health.

7 "Designated crisis responder" means a psychiatrist,  
8 psychologist, or licensed clinical social worker designated by  
9 the department who is authorized to conduct investigations and  
10 detain persons up to seventy-two hours at a licensed psychiatric  
11 facility for a diagnostic examination and evaluation.

12 "Gravely disabled" means a condition in which a person, as  
13 a result of a mental disorder, is unable to provide for that  
14 individual's basic personal needs for food, clothing, or  
15 shelter; is unable to make or communicate rational or  
16 responsible decisions concerning the individual's personal  
17 welfare; and lacks the capacity to understand that this is so.

18 "Judge" means any judge of the family court or per diem  
19 judge appointed by the chief justice as provided in section 604-  
20 2, Hawaii Revised Statutes.

21 "Mentally ill person" means a person having a psychiatric  
22 disorder or other disease that substantially impairs the



1 person's mental health and necessitates treatment or  
2 supervision.

3 "Psychiatric facility" means a public or private hospital  
4 or part thereof that provides inpatient or outpatient care,  
5 custody, diagnosis, treatment, or rehabilitation services for  
6 mentally ill persons or for persons habituated to the excessive  
7 use of drugs or alcohol or for intoxicated persons.

8 SECTION 5. (a) If a designated crisis responder has  
9 examined a person and after investigation and evaluation of the  
10 specific facts alleged and of the reliability and credibility of  
11 the person or persons providing the information, the designated  
12 crisis responder has reason to believe that a person is  
13 imminently dangerous to self or others or gravely disabled, the  
14 designated crisis responder may take or cause the person by oral  
15 or written order, to be taken into emergency custody to a  
16 licensed psychiatric facility for not more than seventy-two  
17 hours pursuant to this part.

18 (b) The licensed psychiatric facility shall then evaluate  
19 the person's condition and admit, detain, transfer, or discharge  
20 the person in accordance with this part. The licensed  
21 psychiatric facility shall notify the court and the designated  
22 crisis responder in writing of the date and time of the initial



1 detention of each person involuntarily detained so that a  
2 probable cause hearing will be held no later than seventy-two  
3 hours after detention.

4 (c) Nothing in this section limits the power of a law  
5 enforcement officer to initiate emergency admission proceedings  
6 under section 334-59, Hawaii Revised Statutes.

7 SECTION 6. (a) When a designated crisis responder  
8 receives information alleging that a person is imminently  
9 dangerous to self or others or gravely disabled, the designated  
10 crisis responder shall:

11 (1) Personally interview the person, unless the person  
12 refuses an interview, and determine whether the person  
13 will voluntarily receive appropriate evaluation and  
14 treatment at a licensed psychiatric facility;

15 (2) Investigate and evaluate the specific facts alleged  
16 and make a determination regarding the reliability and  
17 credibility of any person providing information to  
18 initiate detention; and

19 (3) File a petition for initial detention, if satisfied  
20 that the allegations are true and the person will not  
21 voluntarily seek appropriate treatment.



1           (b) Upon written application of a designated crisis  
2 responder, a judge may issue an order to detain a person at a  
3 licensed psychiatric facility for a seventy-two hour diagnostic  
4 examination and evaluation if there is probable cause to support  
5 the petition and the person has voluntarily refused or failed to  
6 accept appropriate evaluation and treatment.

7           (c) The petition for initial detention shall be executed  
8 subject to the penalties of perjury but need not be sworn to  
9 before a notary public, and may be considered by the court in  
10 determining whether there are sufficient grounds for issuing the  
11 order.

12           (d) The order shall designate retained counsel or, if  
13 counsel is appointed from a list provided by the court, the  
14 name, business address, and telephone number of the attorney  
15 appointed to represent the person.

16           (e) A copy of the order to appear and a petition for  
17 initial detention shall be served personally on the subject of  
18 the petition and served personally or by certified or registered  
19 mail, return receipt requested, deliverable to the addressee  
20 only, on the subject's spouse or reciprocal beneficiary, legal  
21 parents, adult children, and legal guardian, if one has been  
22 appointed. After service on the person, the designated crisis



1 responder shall file the return of service in court and provide  
2 copies of all papers in the court file to the evaluation and  
3 treatment facility and the designated attorney, if any. The  
4 designated crisis responder shall notify the court and the  
5 prosecuting attorney that a probable cause hearing will be held  
6 within seventy-two hours of the date and time of outpatient  
7 evaluation or admission to the evaluation and treatment  
8 facility.

9 (f) The hearing may be postponed for a period not to  
10 exceed forty-eight hours if requested by the subject of the  
11 petition or the subject's attorney. The hearing may be  
12 continued for a period not to exceed twenty-four hours upon  
13 showing of good cause by the subject of the petition or the  
14 subject's attorney.

15 (g) The subject of the petition may be accompanied to the  
16 place of evaluation by the subject's attorney, subject's spouse  
17 or reciprocal beneficiary, legal guardian, or personal  
18 physician. An attorney accompanying the person to the place of  
19 evaluation shall be permitted to be present during the admission  
20 evaluation. Any other person accompanying the person may be  
21 present during the admission evaluation. The facility may  
22 exclude any person whose presence would present a safety risk,



1 delay the proceedings, or otherwise interfere with the  
2 evaluation.

3 SECTION 7. (a) If the evaluation and treatment facility  
4 admits the person, it may detain the person for evaluation and  
5 treatment for a period not to exceed seventy-two hours from the  
6 time of acceptance. The time period for evaluation and  
7 treatment shall exclude Saturdays, Sundays, and holidays.

8 (b) Whenever a person is detained for initial evaluation  
9 and treatment under this part, chapter 334, Hawaii Revised  
10 Statutes, shall apply.

11 SECTION 8. The department may adopt rules pursuant to  
12 chapter 91, Hawaii Revised Statutes, as may be necessary for the  
13 purposes of this part.

14 SECTION 9. The department shall submit a report to the  
15 legislature no later than twenty days prior to the convening of  
16 the regular session of 2015. The report shall assess the pilot  
17 program and determine whether to continue the crisis response  
18 pilot program based on the results of the department's  
19 assessment.

20 SECTION 10. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$ or so  
22 much thereof as may be necessary for fiscal year 2012-2013 for



1 the establishment and administration of the crisis response  
2 pilot program; provided that:

3 (1) No funds appropriated under this section shall be  
4 expended unless the department of human services  
5 receives authorization to receive a federal medicaid  
6 reimbursement for the maximum federal match;

7 (2) The funds appropriated under this section shall be  
8 transferred to the department of health to establish  
9 and administer the crisis response pilot program;

10 (3) The department of health collaborates with the  
11 department of human services to obtain a federal  
12 medicaid reimbursement; and

13 (4) The department of human services begins seeking a  
14 federal medicaid reimbursement for the establishment  
15 and administration of the crisis response pilot  
16 program within three months of commencement of the  
17 program.

18 SECTION 11. There is appropriated out of federal medicaid  
19 funds the sum of \$ or so much thereof as may be  
20 necessary for the establishment and administration of the crisis  
21 response pilot program as a federal match.



1 The sum appropriated shall be expended by the department of  
2 human services for the purposes of this part.

3 **PART III**

4 SECTION 12. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 13. This Act shall take effect upon its approval;  
7 provided that part II of this Act shall be repealed on June 30,  
8 2014.

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# S.B. NO. 2121

**Report Title:**

Department of Health; Involuntary Hospitalization; Crisis Response Pilot Program; Mental Health; Appropriation

**Description:**

Permits any interested person, as defined under section 334-1, HRS, to file a written petition for emergency admission. Requires an independent evaluation of a patient admitted to a licensed psychiatric facility for involuntary hospitalization in certain circumstances. Requires the department of health to establish and implement the crisis response pilot program, under which designated crisis responders will be authorized to conduct investigations and detain persons who are imminently dangerous to self or others or gravely disabled for up to seventy-two hours in a proper facility. Seeks a federal medicaid reimbursement for the maximum federal match to appropriate funds to the department of human services, which is to be transferred to the department of health to establish and administer the crisis response pilot program. Part II repeals 6/30/2014.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

