LATE TESTIMONY

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LORETTA J. FUDDY, A.C.S.W., M.P.H
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
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WRITTEN TESTIMONY ONLY

House Committee on Health

H.B. 2011, Relating to Involuntary Psychiatric Hospitalization

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

Tuesday, January 24, 2012, 10:00 a.m., Room 329

1 **Department's Position:** The Department of Health (DOH) opposes this bill..

2 **Purpose and Justification:** This bill establishes new procedures for the examination and involuntary
3 hospitalization of person that meet critera for commitment to psychiatric facilities.

4 The current language in HRS 334-59 provides a consistent, standardized and unambiguous
5 mechanism for requesting and extending involuntary emergency treatment for individuals who are
6 subject to that form of intervention.

7 The language of the proposed bill creates new procedures and positions which are not clearly
8 defined, and would be challenging to implement.

9 In the new, yet to be named section of HRS 334, part IV, entitled HRS 334-___, entitled
10 "Extended Involuntary Emergency Treatment," section (b) calls for an "informal hearing" if the need for
11 emergency treatment is to extend beyond 120 hours. There is no definition of "informal hearing" in the
12 bill. In the same section, the language states the informal hearing will be conducted by a "mental health
13 worker designated by the director." There is no definition of "mental health worker" in the bill. Both of
14 these ambiguous terms are worthy of further definition in the bill.

1 Later in proposed section HRS 334-____, part (f) entitled, "effect of certification," the bill states
2 "the person may be given treatment in an approved facility for a period not to exceed twenty days." The
3 term "treatment," as currently defined in HRS 334-1, is general and does not specify if medication is or
4 is not included. The bill will be strengthened by explicitly stating if medication is included in the term
5 "treatment," and changing the definition of "treatment" in HRS 334-1 to explicitly state whether
6 medication is included.

7 In the proposed newly titled section HRS 334-59, now described as "Involuntary emergency
8 examination and treatment," section (a) (1) indicates that after an application for examination, the
9 director "may issue a warrant requiring an individual authorized by the director, or any police officer, to
10 take the person to the facility specified in the warrant." The bill will be strengthened by defining the
11 term "warrant" in HRS 334-1. Also, there is a need for a description of how a warrant would be
12 executed by an individual authorized by the director, and a statement about whether the authorized
13 individual has the ability to take a person to a facility by the use of force.

14 In section (a) (2), of the new HRS 334-59, regarding emergency examination without a warrant,
15 new language indicates that an individual authorized by the director "may take the person to an
16 approved psychiatric facility for an emergency examination." The language does not explicitly state the
17 means by which an authorized individual would accomplish such a transport, and if force may be used to
18 effect the transport, both of which would improve the bill.

19 Also in the new language of HRS 334-59, section (d) (2), regarding notification of rights at
20 emergency examination, it describes that the director shall "take reasonable steps to ensure that while
21 the patient is detained, the health and safety needs of any of the patient's dependents are met, and that
22 the patient's personal property and the premises the patient occupies are secure." "Reasonable steps"
23 should be defined. Also, language about specifics as to how the director would "secure an individual's
24 property and premises" would clarify the bill.

1 The bill goes on, in Section 3, to revise HRS 334-60.3, regarding the initiation of proceeding for
2 court-ordered involuntary hospitalization. In section (b) of the amended language, the bill states that
3 "any person may file a petition alleging that a person located in the county not already in involuntary
4 treatment for whom application could be made meets the criteria for commitment to a psychiatric
5 facility." The language would be clearer if the definition of "any person" was more specific, as the
6 current language opens the possibility of inappropriate filing of petitions.
7 Later in amended HRS 334-60.3, section (c) states "If the subject cannot afford to engage a
8 mental health expert, the court, upon application, shall allow a reasonable fee for that purpose. The fee
9 shall be a charge against the department." However, an appropriation was not attached to this bill, and
10 the possible budgetary implications of this fee are not able to be calculated at this time. Further work on
11 the budgetary implications of this language is needed to get a clearer understanding of the cost to the
12 department.
13 We respectfully request that this measure be held. Thank you for the opportunity to testify on
14 this bill.

LATE TESTIMONY

Committee: Committee on Health
Hearing Date/Time: Tuesday, January 24, 2012, 10:00 a.m.
Place: Conference Room 329
Re: _Testimony of the ACLU of Hawaii in Opposition to H.B. 2011, Relating to Involuntary Psychiatric Hospitalization_

Dear Chair Yamane and Members of the Committee on Health:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 2011, relating to involuntary psychiatric hospitalization.

Involuntary commitment is a serious deprivation of liberty than can be justified only in the narrow circumstance where there is mental illness and an imminent physical danger to the person to be committed or to others, evidenced by observed behavior and where there is no less restrictive alternative. In such cases, strong procedural safeguards must be in place throughout to insure that the due process rights of the individual are protected.

H.B. 2011 seeks to eliminate judicial oversight and erode the standard such that individuals may be involuntarily committed in violation of their constitutional rights. For instance, H.B. 2011 would eliminate the protection afforded by a judicial hearing and permit an individual to be committed to extended involuntary emergency treatment against his or her will based solely on the determination of a mental health worker. The bill would also allow a physician to conduct an involuntary examination of an individual without a warrant and force that individual to receive "treatment" without his/her consent.

H.B. 2011 creates ambiguity in the standard, such that there is less justification required to involuntarily hospitalize and forcibly treat a person. For instance, it appears that a person may be involuntarily committed and forcibly treated for being "mentally ill" and "obviously ill," which may not justify stripping away that person's liberty.

Eliminating judicial oversight and allowing for ambiguity in the standards opens the door to abuse. This bill would allow the involuntary commitment and forced treatment of individuals who may not be a danger to themselves or others. The importance of judicial oversight and clear language and the full range of due process protections cannot be overstated, particularly when an individual is forced to take medication or receive other "treatment" against his/her will. For instance, an involuntarily committed individual must be allowed to refuse any treatment for mental illness, which requires informed consent including a full disclosure to the patient of the benefits and risks of treatment. If the attending physician deems that involuntary treatment is necessary, a due process hearing is required to determine if the patient is legally competent to

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refuse standard medical treatment. An individual must be able to refuse neurosurgical treatment for mental disorder on any grounds whatsoever.

H.B. 2011 does not provide an individual with the opportunity to take advantage of less restrictive alternatives. A less drastic alternative cannot be deemed unavailable because the individual lacks funds for treatment. In fact, the state is obligated to finance treatment in non-coercive settings before it invokes involuntary commitment proceedings.

Finally, H.B. 2011 will also create conflicts of interest, in that without judicial oversight we cannot be assured of the impartiality of physicians certifying the need for involuntary commitment when some may gain financially from the admission of a new patient. In a circumstance where an individual's liberty is at stake, even the possibility of such a conflict of interest is unacceptable.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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LATE TESTIMONY

THE HOUSE OF REPRESENTATIVES
THE TWENTY-SIIXTH LEGISLATURE
REGULAR SESSION OF 2012

Committee on Health
Testimony in Opposition to H.B. 2011
Relating to Involuntary Psychiatric Hospitalization

Tuesday, January24, 2012, 10:00 A.M.
Conference Room 329

Chair Yamane and Members of the Committee:

I am Louis Erteschik, Acting Executive Director at the Hawaii Disability Rights Center, and am testifying in opposition to this bill.

It appears that the main thrust of the bill is to make it easier to involuntarily commit individuals to psychiatric hospitals for longer periods of time with less procedural due process protections. That should certainly raise red flags to the legislature that there may be constitutional issues presented herein.

Section One of the bill is particularly troubling. It sets forth a procedure whereby an individual can be subject to an **"extended involuntary emergency treatment".** The term is an inherent contradiction in itself. "Extended" and "emergency" are by definition either shorter term or longer term. Current law does provide for an emergency treatment and commitment, yet is time limited to forty eight hours. (Another provision of this bill would extend that to one hundred twenty hours.)

Yet in this bill, a new procedure is created that would permit the detention of an individual for a period of up to twenty days, under this so called extended emergency procedure. Moreover, the bill provides that the hearing on the petition could be conducted by a mental health worker (not defined in the bill) in lieu of a Judge. That provision completely violates basic due process rights of individuals. While there may be a valid policy in the current law to permit the forty eight hour detention, there is no possible justification for a process that would allow an individual to be deprived of their liberty for a period of **twenty days** at a hearing presided over by an individual who is not even a Judge.

Despite the provision in the bill that attempts to provide for some court review of the proceedings conducted by mental health workers, we do not see that as constitutionally sufficient. It places the onus of filing an appeal upon the individual and it appears that the court review is more limited in scope than a full evidentiary hearing. Additionally, the preference expressed in the bill that the hearing be held at the psychiatric facility lends to the concern that this bill seeks to avoid judicial protections to the extent it can. While it may at times be advantageous to all that the hearing be at the facility, the tenor of this bill that the hearing be conducted without a judge and away from a court raises the specter of "secret" proceedings at the Hawaii State Hospital.

In the past year, we have noticed that the Hawaii State Hospital has been less forthcoming with information such as Patient Event Reports than it used to be. Provision of those reports to the Hawaii Disability Rights Center was required as part of the consent decree in the case brought by the United States Department of Justice. Once the decree was lifted, the current leadership made the decision to stop providing those reports unless they felt that it was appropriate to do so. The attitude of the current leadership at the State Hospital and actions such as those mentioned do not lend any confidence to us that they should be further removed from scrutiny. This bill would do just that and is bad public policy in our view.

Thank you for the opportunity to testify in opposition to this measure.

LATE TESTIMONY

January 24, 2012

Ellen K. Awai, MSCJA, BBA, CPRP, HCPS
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TO: Representative Ryan Yamane, Chair of the House Health Committee & Members
And the members of the Judiciary and Finance Committees
Health Hearing on Tuesday, January 24, 2012, 10:00 a.m. in Room #329

SUBJECT: HB2011 Involuntary Psychiatric Hospitalization, companion to SB195

I am a mental health consumer advocate, a member of Senator Chun-Oakland's mental health and Medicaid task groups, and a former State Adult Mental Health Division employee with the Office of Consumer Affairs. I developed and coordinated the Hawaii Certified Peer Specialist program with over 130 certified peer specialists in the state, consumers with severe mental health issues, who are role models and provide hope of recovery for others in the community. I am also one of the few certified Psychiatric Rehabilitation Practitioners in the state through the U.S. Psychiatric Rehabilitation Association (USPRA). I also graduated last year with my masters in criminal justice administration from Chaminade University and understand the mental health and criminal issues that a person with mental illness faces.

As a member of the task groups and having to deal with this issue of involuntary treatment many times in the last decade, I do not feel that this costly bill is necessary. Hawaii already has HRS334-1 regarding "dangerous to self or others" that would have the police or in this bill revised to "law enforcement" officer calling for assistance from the mental health emergency workers. Honolulu Police Department has had this arrangement set up for a few years with ACCESS line of the Department of Health and the Crisis Mobile Outreach team. A judge may do an oral, then a written ex-parte by the end of the day. As a volunteer for the Adult Probation Office with the Mental Health Court, I have experienced how a person's freedom can be revoked should they break any of the rules. I may also disagree on how some of the policies and procedures are done by court judges in the system.

As a member of National Alliance for Mental Illness (NAMI) Hawaii and a former representative for the national organization, I understand that the members of the local chapter would like to make changes to the law. Hawaii, as a diverse state, may not be ready for what this bill proposes and would be more costly in the long run. Perhaps the easiest way is to get an education program for the judiciary courts that would be more recovery-oriented and rehabilitative than controlling the actions of someone else. Perhaps if strong facts can be proven that a person is a danger to self or others then the person should be involuntarily treated. This would need to be proven by more than a mother's intuition of their grown adult child who is seeking independence. This is also why the HIPAA laws are being adjusted, parents want access to their adult child's medical records. Please do not support the major issues of HB2011.

January 24, 2012

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