

SB 2121

Measure Title: RELATING TO MENTAL HEALTH.

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.

Companion:

Package: None

Current Referral: HTH/HMS/JDL, WAM

Introducer(s): CHUN OAKLAND, Baker, Espero, Fukunaga, Galuteria, Ihara, Shimabukuro



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

**ON THE FOLLOWING MEASURE:
S.B. NO. 2121, RELATING TO MENTAL HEALTH.**

BEFORE THE:

**SENATE COMMITTEES ON HEALTH HUMAN SERVICES AND ON
JUDICIARY AND LABOR**

DATE: Monday, February 06, 2012 **TIME:** 2:45 p.m.
LOCATION: State Capitol, Room 229
TESTIFIER(S): David M. Louie, Attorney General, or
Julio C. Herrera, Deputy Attorney General

Chairs Green, Chun Oakland, Hee, and Members of the Committees:

The Department of the Attorney General supports the intent of this bill, but recommends some amendments be made prior to passing it.

This bill allows an interested person to file a written petition for emergency admission alleging that a person located in the county meets the criteria for commitment to a psychiatric facility, pursuant to chapter 334, Hawaii Revised Statutes (HRS). This bill also requires the following: (1) an independent evaluation of a patient admitted to a psychiatric facility for emergency examination; (2) the Department of Health (DOH) to establish and implement a crisis response pilot program, whereby designated crisis responders will be authorized to investigate and detain, for up to 72 hours, individuals that appear to meet criteria for emergency examination; and (3) DOH and Department of Human Services to collaborate on seeking federal Medicaid reimbursement.

Section 4 of the bill includes a definition of the term "designated crisis responder," it inadvertently excludes, however, advance practical registered nurses (APRN), as used in section 3 relating to the individuals that are to receive training from DOH for this program. For consistency purposes, APRNs should be included in the definition of "designated crisis responder."

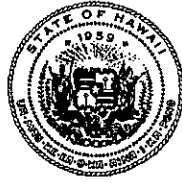
Section 6(f) of the bill allows the probable cause hearing to be "postponed" for 48 hours, at the request of the subject of the petition, or be "continued" for 24 hours, upon a showing of good cause by the subject of the petition. These terms are not defined, and could lead to

confusion and uncertainty in their application. We suggest that this part be amended to provide that, "The hearing may be continued for a period not to exceed 48 hours, if requested by the subject of the petition or the subject's attorney." The last sentence should be deleted.

Finally, sections 1 and 2 of this bill replace the term "police officer" with the term "law enforcement officer," but do not include a specific definition. This is easily remedied by making reference to, or including the definition stated in section 710-1000, HRS:

"Law enforcement officer" means any public servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

We respectfully ask the Committees to pass this bill with the recommended amendments.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committees on Health, Human Services, Judiciary and Labor

S.B. 2121, Relating to Mental Health

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

February 6, 2012

1 **Department's Position:** The Department of Health supports Part I of the bill, and does not support Part
2 II. The Department of Health (DOH), Adult Mental Health Division (AMHD) operates and supports a
3 recovery-oriented system for individuals with severe and persistent mental illness. As with the other
4 service-expansion bills proposed in this year's session, the department understands the Legislature's
5 desire to offer services to more individuals who need them. Our testimony is given with the spirit of
6 cooperation, while at the same time with the spirit of stewardship over the limited amount of resources
7 available.

8 **Fiscal Implications:** No funds are appropriated for Part II of this measure; however, the costs to DOH
9 would be substantial to fund the salary and benefits of responders, bed availability at the psychiatric
10 units, and additional staff to oversee the pilot project.

11 **Purpose and Justification:** Part 1 amends Section 334-59. The amendments:

12 1) Broaden the definition of those who are able to petition a court for involuntary psychiatric
13 hospitalization;

- 1 2) Allow all law enforcement officers, family members, friends, and other supportive individuals in
2 the community an opportunity to formally request emergency treatment for those who appear to
3 need it;
- 4 3) Broaden the number of individuals who have official status to ask a court to have a person with
5 mental illness be examined for treatment;
- 6 4) Continue to protect the due process rights of the individual who is the subject of the petition; and
- 7 5) Enable more individuals to receive necessary treatment.

8 The department does recognize the benefit of increasing the amount of services to those in need
9 as we rebuild a comprehensive recovery-oriented system of care and continued support of individuals
10 with severe and persistent mental illness. We are developing plans for the expansion of services by
11 targeting those consumers in the forensic or criminal justice system, with programs that would focus
12 enhanced comprehensive services based in the community. These enhanced services have the goal of
13 preventing the need for hospitalization. With increased, but still finite, resources available, we see the
14 first increment of additional services being for forensic consumers, so as to address the need for better
15 treatment outcomes and increased community safety

16 With this in mind, the department believes Part I of the measure, if enacted, will make Part II of
17 the bill unnecessary. The department respectfully suggests breaking this bill into its two components,
18 enacting Part I now, monitoring for success in getting more people into treatment under that change, and
19 then considering the need for Part II at a another time if necessary.

20 Part II of the measure establishes designated crisis responders who are authorized to conduct
21 investigations and detain persons up to 72 hours in the proper facility. This is expected to cost a
22 significant amount of money, with an undefined incremental benefit to relatively small additional
23 numbers of individuals who receive treatment, especially if Part I is enacted. The new positions of
24 designated crisis responders must be specially trained psychiatrists, psychologists, advance practice

1 nurses, or licensed clinical social workers. These are among the most expensive staff we hire. As the
2 evaluations are to be done in person, a significant number of positions will be necessary, in order to have
3 county-wide availability 24 hours per day. The average annual cost for these specialists is
4 approximately \$100,000 for salary and benefits, and the total cost may be hundreds of thousands of
5 dollars per year. The pilot would also require some level of guaranteed bed availability at the
6 psychiatric units on Oahu to accommodate persons ordered to hospital by a responder. At bed rates of
7 about \$1,000 a day, a significant amount of funds must be appropriated to hold beds available for those
8 ordered by the crisis responders to a hospital. This overall cost is not calculated at this time, as there is
9 no estimate of the number of individuals who would be subject to involuntary hospitalization under this
10 project. Bed availability at local psychiatric hospitals is limited, and no provision is made in the bill for
11 the management of an individual in the community if no hospital bed is available. And, as this pilot is to
12 be procured by the department, an appropriation would be needed to establish additional staff to oversee
13 the project, monitor the contract, and evaluate the outcome.

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



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

Committee on Health
Committee on Human Services
Committee on Judiciary and Labor
Testimony on S.B.2121
Relating to Mental Health

Monday, February 6, 2012, 2:45 P.M.
Conference Room 229

Chair Green, Chair Chun-Oakland, Chair Hee and Members of the Committees:

I am Louis Erteschik, Acting Executive Director at the Hawaii Disability Rights Center, and we offer the following comments on this bill.

This appears to be another in a series of bills introduced and heard this session designed to make it easier to involuntarily detain, commit or treat (medicate) individuals with mental illness. We are concerned that the legislature is not focusing on the more important aspects of the problem that it appears to be trying to solve. In our experience, we really have not seen a significant number of individuals who refused medication, where they were sufficiently in distress that involuntary treatment was warranted. On the other hand, we frequently see many clients attempting to obtain mental health services from the state and who are denied. For that reason, we believe the legislature would be better off addressing the issue of the many mental health consumers who seek, but do not receive, mental health services, as opposed to forcing services upon those who do not want them.

As to some of the specific provisions of the bill, we fail to understand the necessity for the provision on page 3 that allows “**any interested person**” to file a petition for emergency admission to a psychiatric facility. It seems to us that this is such a broad term that it is too open ended and invites the potential for mischief between individuals who may have ill motives towards each other. It is not clearly stated why the current law is not sufficient or needs to be broadened as to who can file a petition for commitment.



While the intent in Part 2 may be to establish a team of crisis responders who are better trained to address mental illness than police officers, we have two main concerns. The first is that we would prefer that the focus of the response team be to obtain community based mental health services for individuals. It appears that the prime mission of the team is to "round up" people who are thought to be mentally ill and in need of treatment and to take them to a facility. As we stated earlier, we view the lack of community services as a much larger problem than those few individuals who need, but refuse medication. We believe that the money appropriated would be better spent if were allocated to securing resources for individuals who wanted them, as opposed to trying to force treatment upon those who don't. We support the idea of a Medicaid match as the bill requires but again believe it would be more appropriate to develop this in the context of providing services to the consumers who seek them.

The other is that the bill is unclear as to how much authority these responders have. In Section 6 it appears that the responders have the authority to petition the Court for an emergency commitment order. We have no objection to that. However, in Section 5 it appears that crisis responders have the authority on their own to transport these individuals to psychiatric facilities for a 72 hour period. We have concerns about that, particularly inasmuch as there is a broad range in the educational and professional requirements of responders, who are defined in the bill as not just psychiatrists and psychologists, but also advanced practice nurses and licensed clinical social workers. We question whether this team should have such broad authority, and would seek clarity as to how Section 5 interrelates with Section 6.

In sum, while we are sympathetic to the issues being raised, we are not convinced that this bill best targets state resources that need to be allocated to assist individuals with mental illness, and we have concerns there are some provisions in the bill that may infringe upon the civil liberties of various individuals.

Thank you for the opportunity to testify on this measure.

From: C. Pomponio [c_pomponio@yahoo.com]
Sent: Monday, January 30, 2012 8:57 AM
To: HTHTestimony
Subject: SB2121

I just read the bill introducing measures to allow certain individuals to take measures to restrain individuals who may be a danger to self or others; and have them institutionalized for up to 72 hours or 6 days in a 'proper' facility. My comments and questions are as follows:

I realize how difficult it is to interact with individuals who may seem to be out of control - but I think we would need to define our terms first. [proper facility; who is in charge].

For example - it took many months to evict a tenant who had very loud arguments with other tenants. Much of the behind the scenes workings included a lot of hearsay - which made things difficult for us - however - he did pose a physical threat to several tenants and eventually he was evicted.

Only highly trained individuals should be included in the process of evaluation of an individual: law enforcement are trained in this area.

The only people who should be involved with public interventions should be trained professionals; rather than lay-people with little education or training; and further care needs to be taken to avoid the frivolous, immature complaining from young inexperienced individuals who merely wish to control conduct, and have a small measure of power over others.

Since our State has become involved with interventions of the homeless, 'obviously' drug addicted persons; we are both relieved and saddened that so many people have literally been hauled away and the sidewalks are scrubbed clean of the debris that they left behind. But we still have to ask ourselves; are we willing to push this matter to the extent that we will medicate and haul off people into prisons, jails, and other detention places without proper due process?

In our effort to create a beautiful, society of healthy, happy, engaged people who support and contribute to the city we live in, are we sure we're not becoming a little strict here? I am worried about creating neo-facism in which tolerance is missing and we think of just shipping people out somewhere on a railway to a proper facility.

Very truly yours,
Cathy Pomponio

From: Mailing List
Sent: Thursday, February 02, 2012 3:13 PM
To: HTHTestimony
Cc: kathi@namihawaii.org
Subject: Testimony for SB2121 on 2/6/2012 2:45:00 PM

Testimony for HTH/HMS/JDL 2/6/2012 2:45:00 PM SB2121

Conference room: 229
Testifier position: Support
Testifier will be present: Yes
Submitted by: Kathleen Hasegawa
Organization:
E-mail: kathi@namihawaii.org
Submitted on: 2/2/2012

Comments:

From: [Mailing List](#)
To: [HTHTestimony](#)
Cc: robertscottwall@yahoo.com
Subject: Testimony for SB2121 on 2/6/2012 2:45:00 PM
Date: Saturday, February 04, 2012 9:30:03 AM

Testimony for HTH/HMS/JDL 2/6/2012 2:45:00 PM SB2121

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Scott Wall
Organization: Individual
E-mail: robertscottwall@yahoo.com
Submitted on: 2/4/2012

Comments:

I am very much against this bill. It simply broadens the scope of those allowable to petition for the involuntary commitment of others. It also calls for a pilot program without funding it. We just went through this with SB 2124. We can not mandate treatment for mental health consumers without providing the resources for this treatment. We, the State & the mental health community must get together and find some vehical for addressing this problem that is acceptable to all and is within the means of the Department of Health. As it is I oppose this bill strongly.

February 3, 2012

Ellen K. Awai, MSCJA, BBA, CPRP, HCPS
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TO: Senator Josh Green, M.D. Chair of the Senate Health Committee
Senator Suzanne Chun Oakland, Chair of the Senate Human Services Committee
Senator Clayton Hee, Chair of the Senate Judiciary and Labor Committee
And all Committee members
Health Hearing on Monday February 6, 2012, 2:45 p.m. in Room #229

SUBJECT: SB2121 on Emergency Treatment for Mental Health - Please do not support!

I have been a mental health advocate for about 20 years locally and nationally with SAMHSA Center for Mental Health Services, a member of mental health and Medicaid task groups, and a former department of health employee. I am also one of the few certified Psychiatric Rehabilitation Practitioners in the state through the U.S. Psychiatric Rehabilitation Association (USPRA). I 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 task groups and having to deal with this issue of involuntary treatment many times in the last decade, I feel this bill is costly and unnecessary. Hawaii already has HRS334-59 and -60. I do agree "police" should be revised to "law enforcement" officer calling for assistance from mental health emergency workers. A judge is already authorized to do an ex-parte, if strong facts are provided that a person is a danger to self or others and needs to be involuntarily treated. But the term "gravely disabled" could include most of the population falling below federal poverty level, since in this economy it is a hardship to cover shelter, food, clothing, and medications. But having such a law in Hawaii, a diverse cultural state, "any interested party" could be done by anyone who does not agree with their neighbors' cultural values, morals, and customs, making such a law costly.

In Part II of this bill, Honolulu and other counties has an emergency crisis response system set up with the Department of Health's Access line, crisis mobile outreach, and the police department. Dr. Thomas Hester, former chief of Adult Mental Health Division set up this system prior to 2006, making a pilot unnecessary. The police also had three psychologists designated by the Department of Health director on call 24-hours to advise police if it was necessary to take individuals to Queen's, Castle, or Tripler Hospitals under a program set up about 2007. If these programs need to be corrected then it should be, not create another costly program.

I have volunteered for the Adult Probation Office with the Mental Health Court and have experienced how a person's freedom can be revoked by breaking some rules made by a probation officer, although being a law-abiding citizen. I may disagree with some of the policies and procedures by the courts. But perhaps educating the judiciary court system to be more recovery-oriented and rehabilitative rather than controlling by punishment would save on costs and improve the state's economy. Please do not support SB2121, except for changing police to law enforcement officer!

From: Mailing List
Sent: Sunday, February 05, 2012 8:16 AM
To: HTHTestimony
Cc: emailcvk@aol.com
Subject: Testimony for SB2121 on 2/6/2012 2:45:00 PM

Testimony for HTH/HMS/JDL 2/6/2012 2:45:00 PM SB2121

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Carol Kozlovich
Organization: Individual
E-mail: emailcvk@aol.com
Submitted on: 2/5/2012

Comments:

From: Mailing List
Sent: Saturday, February 04, 2012 5:03 PM
To: HTHTestimony
Cc: Brenda.Kosky@gmail.com
Subject: Testimony for SB2121 on 2/6/2012 2:45:00 PM

Testimony for HTH/HMS/JDL 2/6/2012 2:45:00 PM SB2121

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Brenda Kosky
Organization: Individual
E-mail: Brenda.Kosky@gmail.com
Submitted on: 2/4/2012

Comments:

Yes I back this, if immediate danger to self or others. We don't want to look away and have them kill themselves, when we could have held out a hand for them to hold onto!