



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

Committee on Ways and Means Testimony on S.B.2121, SD1 Relating to Mental Health

Friday, February 24, 2012, 9:00 A.M.
Conference Room 211

Chair Ige, and Members of the Committee:

The Hawaii Disability Rights Center offers the following comments on this bill.

This is one 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 with a clear and abiding interest in the well being of the individual”** 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 very difficult to define. Further, the procedure set forth in the bill is one that allows a Judge to issue an ex parte order to take the subject of the petition into custody and be transported to a psychiatric facility. An ex parte hearing is one where the person is not present and therefore has no chance to represent themselves or present evidence. So, the result of this provision is that anyone who claims to have an



interest in the well being of another can petition the court and talk to the Judge privately and force another individual to be subject to an emergency examination and treatment.

This ought to raise red flags as to the potential for an infringement on a person's liberty. 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. Current law allows a variety of individuals to make such an application to a Judge – these include doctors and psychologists and other health or social service professionals or state or county workers. There is no need or justification to expand the list of individuals who can petition the court in such an open ended fashion. If a person is exhibiting behavior that may justify an emergency examination there are many individuals under the current law who are permitted to contact the court. No evidence has been presented to explain why the law needs to be expanded.

While the bill purports to protect the subjects of these proceedings by permitting the appointment of a guardian ad litem, we are concerned that since much of the bill creates an ex parte proceeding where the subject will never be present, that this provision is illusory and offers no real protection. It is noteworthy that the bill does not require a guardian ad litem – it merely authorizes the court to do the appointment.

The other, very troubling concern in this bill is that it undermines and reverses a long standing body of law which established the concept of “imminently dangerous” as a requirement for involuntary hospitalization or treatment. This bill would delete the requirement that the danger be “imminent” and allow merely that the person be or “predictably” become a danger. The deletion of the requirement that individuals be **imminently** dangerous will no longer require a showing of any immediacy. It will allow for the possibility of future harm that may result and we have concerns that this is potentially so speculative as to infringe upon the civil liberties of various individuals.

Without a clear example of why the current law needs to be changed we urge that the Legislature exercise caution. This is a complex area of the law, posing many questions of civil liberties and is governed by several constitutional precedents decided by the U.S. Supreme Court. Further, the concept of trying to predict future behavior of an individual is extremely difficult at best and fraught with peril in a free society to say the least. We would hope that the Legislature would seek to clarify what problems, if any, would be solved by this bill, and that it would conduct more discussion before taking action. This is a highly charged issue, and there are well intentioned individuals with very varying points of view on different sides of the debate. That, coupled with the fact that there is a vast body of settled law on the subject, complicates any attempt to suggest that the changes proposed in this bill will produce any positive results.

Thank you for the opportunity to testify on this measure.

Senate Committee on Ways and Means
February 24, 2012
9:00 a.m.
Room 211

Re: SB 2121, SD1, Relating to Mental Health

On behalf of Kāhi Mōhala Behavioral Health, we are writing in support of SB 2121, SD1, relating to Mental Health.

SB 2121, SD1, would permit any interested person, as defined under section 334-1, HRS, to file a written petition for emergency admission and it would make other changes relevant to our provision of mental health services in the state.

We believe that this measure is an important step for the benefit of the community and we hope to continue to be positively engaged in discussions about it and other important mental health policy issues as the legislative session progresses.

Kāhi Mōhala Behavioral Health is a center for health care services. Kāhi Mōhala embraces an inter-disciplinary approach to services, incorporating an integrative perspective in emotional, physical, cognitive and behavioral health care treatment. The Kāhi Mōhala C.A.R.E.S. philosophy (Culture of Aloha, Relationship Based, and Environment of Safety) enhances excellence of care by incorporating the feedback of both patients and staff in developing the most positive healing environment.

Kāhi Mōhala's 88-bed facility is located on 14.5 acres on the rural west side on the island of Oahu. It is Hawaii's only freestanding, community-based, not-for-profit psychiatric hospital; serving the needs of not only individuals and families in Hawaii, but also those throughout the Pacific Rim. Kahi Mohala is accredited by The Joint Commission, certified by TRICARE and Medicare/Medicaid.

Kāhi Mōhala Behavioral Health
91-2301 Old Fort Weaver Road
Ewa Beach, HI 96706



Committee: Committee on Ways and Means
Hearing Date/Time: Friday, February 24, 2012, 9:00 a.m.
Place: Conference Room 211
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2121, SD1
Relating to Mental Health

Dear Chair Ige and Members of the Committee on Ways and Means:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 2121, SD1 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.

S.B. 2121, SD1 seeks to erode the standard such that individuals may be involuntarily committed in violation of their constitutional rights. Eliminating the requirement that the person be “imminently” dangerous to him/herself or others removes the justification required to involuntarily hospitalize and forcibly treat a person and 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 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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To the Hawaii Senate Ways and Means Committee

Re: SB 2121 SD1

Honorable Chair, Vice-Chair, and members of the committee,

My name is Scott Wall and I am in support of SB 2121 SD1 albeit reluctantly. While acknowledging the need for some form of emergency commitment procedure I'm still not sure that this is the best of all possible vehicles.

I can however see the writing on the walls and I believe that a measure giving greater latitude in commitment proceedings will move through the Legislature in the near future. Bearing that in mind and appreciating the guardian ad litem provision included in this bill I give my grudging support while hoping that the community will continue striving to find the best vehicle possible for the clear problem at hand.

Mahalo,

Scott Wall