

**TESTIMONY**

**SB2124**

**HTH Committee Hearing 1/27/2012**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

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

In reply, please refer to:  
File:

**Senate Committee on Health**

**S.B. 2124, Relating to Mental Health**

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

**Friday, January 27, 2012, 2:45 p.m., Room 229**

1 **Department's Position:** The Department of Health (DOH) opposes this bill as a whole, but supports  
2 two individual components.

3 **Purpose and Justification:** The general intent of this bill is to broaden the criteria used to involuntarily  
4 commit an individual to both outpatient and involuntary treatment. Some of the provisions of the bill,  
5 such as changing the term "police officer" to "law enforcement officer," and deleting the term  
6 "obviously ill," are supported. These two recommended changes are improvements to the current statute  
7 and are an integral part of an ongoing need for attention and support for all levels of intervention and  
8 for a comprehensive recovery oriented system of effective treatment services.

9 However, the department has concerns with the provisions which broaden the definitions used as  
10 the criteria to define dangerousness, as the proposed language allows involuntary treatment based on  
11 some possible future event or behavior. The current statutory language requires concrete actions to  
12 establish dangerousness and grave disability, and the department supports those parts of the current  
13 statute. The proposed new language is ambiguous and may result in the involuntary commitment to  
14 treatment for some individuals who, in actuality, will not go on to become dangerous. Including a

1 definition for the terms “law enforcement officer” and “reasonably foreseeable future” would make  
2 those terms more clear.

3 The department’s position is taken as part of advocating for the rights of consumers to accept or  
4 refuse treatment, as well as to represent the interests of the mental health providers who implement  
5 involuntary commitment proceedings. The department acknowledges that there are concerned  
6 community stakeholders who support broadening the legal requirements so as to facilitate the process of  
7 committing an individual with severe and persistent mental illness for treatment. The specific  
8 provisions to which the department has concerns are: Section 1, related to HRS 334-1: The current  
9 definition of “dangerous to self” is subject to interpretation, but the statutory requirement that  
10 dangerousness be evident by a specific recent act, attempt, or threat provides some degree of objective  
11 evidence. The proposed legislation eliminates that requirement, and replaces it with more ambiguous  
12 language.

13 The current definition of “dangerous to others” includes descriptions of recent actions, threats, or  
14 behaviors that have a high risk of self-injury. The proposed language substitutes phrases such as  
15 “substantial likelihood” of behaviors, and that “in the reasonably foreseeable future” that a person will  
16 engage in self-injury. The proposed terms are more ambiguous and subjective, and further defining  
17 them would add clarity.

18 The proposed definition of ‘gravely disabled’ contains the phrases describing that a person is  
19 “incapable of making and informed treatment decision,” “is unlikely, without supervision and the  
20 assistance of others, to satisfy the need for care and self protection,” and “so that it is probable that” an  
21 adverse outcome will occur. These terms are also ambiguous. They are more consistent with  
22 descriptions of an individual who may qualify to be placed under a guardianship status. Clarification of  
23 the terms used is needed.

1           The department does agree with the deletion of the term “obviously ill” from HRS 334-1, as the  
2 phrase is ambiguous and difficult to implement.

3           Section 2, related to HRS 334-59: The department agrees with substituting the term “law  
4 enforcement “for “police,” when describing the duties of law enforcement officers. The term should be  
5 defined in HRS 334-1 to be clearer.

6           The department has concerns with striking the word “imminently” before the word “dangerous”  
7 in this section. The term “dangerous” as defined in HRS 334-1 requires danger to be imminent. The  
8 descriptor “imminently” gives clarity, and the proposed change would broaden the term “dangerous”  
9 significantly and increase subjectivity in its application.

10          Section 6, related to HRS 334-144: The proposed changes to this section would delete the  
11 current statutory requirement that a person “poses an imminent danger” and replaces it by language  
12 which would allow a court to order involuntary treatment if it finds a person “will become dangerous.”  
13 This increased ambiguity of the standard for involuntary treatment may result in individuals who are not  
14 imminently dangerous being ordered into treatment for something that may not happen, rather than  
15 already has happened, as the current statutory language requires. Further definition of the terms used is  
16 needed.

17          We appreciate the opportunity to testify and plan to continue working with stakeholders in this  
18 process.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2124, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

SENATE COMMITTEE ON HEALTH

**DATE:** Friday, January 27, 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

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**LATE**

Chair Green and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has some suggested changes.

This bill amends many of the terms used in chapter 334, Hawaii Revised Statutes (HRS), relating to involuntary psychiatric hospitalization, such as broadening the definitions of “dangerous to others,” and “dangerous to self,” deleting the term, “obviously ill,” removing the immanency requirement in determining dangerousness, and replacing the term “police officer” with “law enforcement officer.”

Section 1 of this bill amends the definitions of “dangerous to others” and “dangerous to self,” by, among other things, removing the wording that there be a “recent act, attempt or threat.” This creates ambiguity in determining how far back one can look in assessing dangerousness to others. Keeping the requirement that there be a “recent” event, strikes the appropriate balance between community safety and personal freedom.

The remainder of section 2, as well as sections 3-6, also remove references to the immanency of the danger posed by the subject. The term “imminent,” as it relates to dangerousness, is not currently defined by chapter 334, HRS. Though its removal raises concerns

about overbroad application of involuntary psychiatric hospitalization, the inclusion of wording in the definitions of "dangerous to others" and "dangers to self" that "there is a substantial likelihood that a person in the reasonably foreseeable future will" be dangerous, helps to lessen some of those concerns.

Finally, Section 2 of this bill replaces the term "police officer" with the term "law enforcement officer," but does 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 this Committee to consider these recommendations if you choose to pass this bill.

Testimony for HTH 1/27/2012 2:45:00 PM SB2124

Conference room: 229  
Testifier position: Oppose  
Testifier will be present: Yes  
Submitted by: Scott Wall  
Organization: Individual  
E-mail: [robertscottwall@yahoo.com](mailto:robertscottwall@yahoo.com)  
Submitted on: 1/25/2012

Comments:

I strongly oppose this bill. I feel that it is a constitutional violation of a consumers right to control their own destiny. I feel that it defines a persons life style as potentially dangerous and grounds for involuntary commitment. I think that it breaks dangerous ground. I believe that it will not stand up in court. I know that the Hawai'i judiciary is against it because they know that the state does not have the resources to hospitalize, house, and treat all of the potential new patients that could result from this law. I fear that this law could be used to sweep the homeless conveniently off the street if so desired. The only way I could ever support such a bill would be if I could be convinced that every person on Earth was benevolent. Barring that as long as a relative has the potential power to lock up another relative for the family farm the I will be against this bill.

Senate Committee on Health  
January 27, 2012  
2:45 p.m.  
Room 229

Re: SB 2124, Relating to Mental Health

Aloha Chair Green, Vice-Chair Nishihara and members of the committee. On behalf of Kāhi Mōhala Behavioral Health, we are writing in support of SB 2124, relating to Mental Health.

SB 2124 would amend various statutory provisions relating to emergency examination and hospitalization and involuntary treatment. This measure broadens the definitions of "dangerous to others" and "dangerous to self" to include a substantial likelihood of harm in the reasonably foreseeable future, and amends the definition of "gravely disabled".

We believe that this measure is important 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





## HAWAII DISABILITY RIGHTS CENTER

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### THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

#### Committee on Health Testimony for S.B. 2124 Relating to Mental Health

Friday, January 27, 2012, 2:45 P.M.  
Conference Room 229

Chair Green and Members of the Committee:

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

Since there is no Preamble language to set forth the purpose of the bill, it is not completely clear what the rationale or necessity for the bill is, nor is there an indication of why the current law needs to be changed. We presume that the intent of the bill is to make it easier to involuntarily hospitalize and/or medicate individuals with mental illness. Our analysis is that in some ways the bill might make it easier to do that and in some ways it might make it more difficult. In some ways, it might have little effect.

On the one hand the bill does achieve that purpose because it broadens the definition of "dangerous" to delete the requirement that individuals be **imminently** dangerous, so that it no longer requires a showing of any immediacy. It substitutes language which requires a substantial likelihood of conduct in the reasonably foreseeable future. However, while no longer requiring a showing of imminent danger, it deletes the current definitions of "dangerous to self" or "dangerous to others" and substitutes language which defines dangerousness in terms of serious physical harm or suicide. In that respect, this new language may make it more difficult to deem an individual to be "dangerous" under the statute because their behavior may not give rise to that level of physical harm or suicide, even based on the possibility of future conduct.

The bill takes much of the language in the current definition of dangerous and moves that to the definition of "gravely disabled." As mentioned, without preamble language it is difficult to know what the purpose is for moving identical language from one definition



to another. Moreover, since emergency examinations and admissions can be based upon any of those criteria, it is not clear what in reality will change if the bill is enacted in this form. The same appears to be true for the provision on outpatient treatment. While a person who is gravely disabled may be the subject of such a proceeding, the law still requires a showing of dangerousness prior to ordering treatment. As discussed previously, even though the definition provides for the possibility of future actions, it nonetheless requires that those future actions cause serious bodily harm or suicide. For that reason, it is not clear at all that anyone will necessarily be subject to treatment under this provision as opposed to the current law.

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 definitional changes proposed in this bill will produce any positive results.

Thank you for the opportunity to testify on this measure.

January 26, 2012

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TO: Senator Josh Green, M.D. Chair of the Senate Health Committee & Members  
Health Hearing on Friday, January 27, 2012, 2:45 p.m. in Room #229

SUBJECT: SB2124 on Involuntary Psychiatric Treatment - Please do not support!

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. 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.

A person with severe and persistent mental illness have episodes of crisis that occur when we may be dangerous, but more likely to be vulnerable to the public. But we are not always in crisis! The suggested wording for being "dangerous to self or others" could be just because we have a diagnosis. "Gravely disabled" could include most of the population that falls below federal poverty level because we cannot provide ourselves with shelter, food, clothing, and medications in this economy.

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 this bill suggests revising to "law enforcement" officer calling for assistance from the mental health emergency workers. If needed, a judge is authorized to do an ex-parte, if strong facts can be provided that a person is a danger to self or others and needs to be involuntarily treated.

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 disagree with some of the policies and procedures by the courts. Perhaps educating the judiciary court system to be more recovery-oriented and rehabilitative rather than controlling a person's actions would save on costs and improve the state's economy. Please do not support SB2124!

Mahalo and Aloha!

Ellen K. Awai  
Mental Health Advocate