
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The legislature finds that Hawaii's current
2 standard for involuntary hospitalization does not adequately
3 prevent harm, either to persons suffering from mental illness or
4 substance abuse, or to members of the public. By requiring
5 proof that a person is "imminently dangerous to self or others",
6 the law essentially requires the point of danger--and thus
7 potential harm--to have already been reached. Instead, the
8 standard should be more flexible to allow the person to receive
9 treatment *before* the point of danger has been reached and
10 avoidable harm occurs.

11 The legislature notes that the National Alliance on Mental
12 Illness, in its December 2016 public policy platform, asserts
13 that states should "adopt broader, more flexible standards that
14 would provide for involuntary commitment and/or court ordered
15 treatment when an individual, due to mental illness . . . is
16 gravely disabled," in addition to other grounds. The policy
17 platform defines a "gravely disabled" person as one who "is



1 substantially unable . . . to provide for any of his or her
2 basic needs, such as food, clothing, shelter, health or
3 safety[.]" The policy platform also explains that requiring
4 proof of dangerousness often produces "unsatisfactory outcomes
5 because individuals are allowed to deteriorate needlessly before
6 involuntary commitment and/or court-ordered treatment can be
7 instituted."

8 The legislature acknowledges that, collectively, Act 221,
9 Session Laws of Hawaii 2013, and Act 114, Session Laws of Hawaii
10 2016, deleted the "gravely disabled" and "obviously ill"
11 categories from the criteria for involuntary hospitalization, in
12 furtherance of a pilot program for assisted community treatment
13 that is now permanent. Mentally ill persons in either of these
14 categories may not be *imminently* dangerous to themselves or
15 others, but still pose a very real danger to themselves or the
16 public and thus should be covered by the law. While the
17 legislature supports the continuation of the assisted community
18 treatment program and its complementary role in treating mental
19 illness and substance abuse on an outpatient basis, the
20 legislature is cognizant that a portion of the mentally ill
21 population, including the chronically homeless, are being



1 deprived of urgent, medically appropriate mental health
2 intervention that is best administered on an inpatient basis.

3 Accordingly, the purpose of this Act is to more effectively
4 protect mentally ill individuals and the public by:

5 (1) Restoring the categories of "gravely disabled" and
6 "obviously ill" to the criteria for involuntary
7 hospitalization that were deleted by Act 221, Session
8 Laws of Hawaii 2013; and

9 (2) Increasing the maximum period of emergency
10 hospitalization from forty-eight hours to seventy-two
11 hours.

12 SECTION 2. Section 334-1, Hawaii Revised Statutes, is
13 amended by adding two new definitions to be appropriately
14 inserted and to read as follows:

15 "Gravely disabled" means a condition in which a person, as
16 a result of a mental disorder:

17 (1) Is unable to provide for their basic personal needs
18 for food, clothing, or shelter;

19 (2) Is unable to make or communicate rational or
20 responsible decisions concerning their personal
21 welfare; and



1 (3) Lacks the capacity to understand the aforementioned
2 disabilities.

3 "Obviously ill" means a condition in which a person's
4 current behavior and previous history of mental illness, if
5 known, indicate a disabling mental illness, and the person is
6 incapable of understanding that there are serious and highly
7 probable risks to health and safety involved in refusing
8 treatment, or the advantages of accepting treatment and the
9 alternatives to the particular treatment offered, after the
10 advantages, risks, and alternatives have been explained to the
11 person."

12 SECTION 3. Section 334-59, Hawaii Revised Statutes, is
13 amended to read as follows:

14 1. By amending subsections (a) and (b) to read:

15 "**§334-59 Emergency examination and hospitalization.** (a)
16 Initiation of proceedings. An emergency admission may be
17 initiated as follows:

18 (1) If a law enforcement officer has reason to believe
19 that a person is [~~imminently~~]:

20 (A) Imminently dangerous to self or others[~~r~~];

21 (B) Gravely disabled; or



1 (C) Obviously ill,
2 the officer shall call for assistance from the mental
3 health emergency workers designated by the director.
4 Upon determination by the mental health emergency
5 workers that the person is imminently dangerous to
6 self or others, is gravely disabled, or is obviously
7 ill, the person shall be transported by ambulance or
8 other suitable means, to a licensed psychiatric
9 facility for further evaluation and possible emergency
10 hospitalization. A law enforcement officer may also
11 take into custody and transport to any facility
12 designated by the director any person threatening or
13 attempting suicide. The officer shall make
14 application for the examination, observation, and
15 diagnosis of the person in custody. The application
16 shall state or shall be accompanied by a statement of
17 the circumstances under which the person was taken
18 into custody and the reasons therefor, which shall be
19 transmitted with the person to a physician, advanced
20 practice registered nurse, or psychologist at the
21 facility.



1 (2) Upon written or oral application of any licensed
2 physician, advanced practice registered nurse,
3 psychologist, attorney, member of the clergy, health
4 or social service professional, or any state or county
5 employee in the course of employment, a judge may
6 issue an ex parte order orally, but shall reduce the
7 order to writing by the close of the next court day
8 following the application, stating that there is
9 probable cause to believe the person is mentally ill
10 or suffering from substance abuse, is imminently
11 dangerous to self or others, is gravely disabled, or
12 is obviously ill, and in need of care or treatment, or
13 both, giving the findings upon which the conclusion is
14 based. The order shall direct that a law enforcement
15 officer or other suitable individual take the person
16 into custody and deliver the person to a designated
17 mental health program, if subject to an assisted
18 community treatment order issued pursuant to part VIII
19 of this chapter, or to the nearest facility designated
20 by the director for emergency examination and
21 treatment, or both. The ex parte order shall be made



1 a part of the patient's clinical record. If the
2 application is oral, the person making the application
3 shall reduce the application to writing and shall
4 submit the same by noon of the next court day to the
5 judge who issued the oral ex parte order. The written
6 application shall be executed subject to the penalties
7 of perjury but need not be sworn to before a notary
8 public.

9 (3) Any licensed physician, advanced practice registered
10 nurse, physician assistant, or psychologist who has
11 examined a person and has reason to believe the person
12 is:

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

14 (B) Imminently dangerous to self or others[?],
15 gravely disabled, or is obviously ill; and

16 (C) In need of care or treatment;

17 may direct transportation, by ambulance or other
18 suitable means, to a licensed psychiatric facility for
19 further evaluation and possible emergency
20 hospitalization. A licensed physician, an advanced
21 practice registered nurse, or physician assistant may



1 administer treatment as is medically necessary, for
2 the person's safe transportation. A licensed
3 psychologist may administer treatment as is
4 psychologically necessary.

5 (b) Emergency examination. A patient who is delivered for
6 emergency examination and treatment to a facility designated by
7 the director shall be examined by a licensed physician or
8 advanced practice registered nurse without unnecessary delay,
9 and may be given such treatment as is indicated by good medical
10 practice. A psychiatrist, advanced practice registered nurse,
11 or psychologist may further examine the patient to diagnose the
12 presence or absence of a mental disorder, assess the risk that
13 the patient may be dangerous to self or others, is gravely
14 disabled, or is obviously ill, and assess whether or not the
15 patient needs to be hospitalized."

16 2. By amending subsections (d) and (e) to read:

17 "(d) Emergency hospitalization. If the physician,
18 advanced practice registered nurse, or psychologist who performs
19 the emergency examination has reason to believe that the patient
20 is:

21 (1) Mentally ill or suffering from substance abuse;



1 (2) Imminently dangerous to self or others[~~r~~], is gravely
2 disabled, or is obviously ill; and
3 (3) In need of care or treatment, or both;
4 the physician, advanced practice registered nurse, or
5 psychologist may direct that the patient be hospitalized on an
6 emergency basis or cause the patient to be transferred to
7 another psychiatric facility for emergency hospitalization, or
8 both. The patient shall have the right, immediately, upon
9 admission, to telephone the patient's guardian [~~or~~], a family
10 member [~~including~~], a reciprocal beneficiary, or an adult
11 friend, and an attorney. If the patient declines to exercise
12 that right, the staff of the facility shall inform the adult
13 patient of the right to waive notification to the guardian,
14 family [~~including a~~] member, or reciprocal beneficiary, and
15 shall make reasonable efforts to ensure that the patient's
16 guardian [~~or~~], family [~~including a~~], or reciprocal beneficiary[~~r~~
17 ~~is]~~ are notified of the emergency admission, but the patient's
18 family [~~including a~~] or reciprocal beneficiary[~~r~~] need not be
19 notified if the patient is an adult and requests that there be
20 no notification. The patient shall be allowed to confer with an
21 attorney in private.



1 (e) Release from emergency hospitalization. If at any
2 time during the period of emergency hospitalization the
3 responsible physician concludes that the patient no longer meets
4 the criteria for emergency hospitalization the physician shall
5 discharge the patient. If the patient is under criminal
6 charges, the patient shall be returned to the custody of a law
7 enforcement officer. In any event, the patient must be released
8 within [~~forty-eight~~] seventy-two hours of the patient's
9 admission, unless the patient voluntarily agrees to further
10 hospitalization, or a proceeding for court-ordered evaluation or
11 hospitalization, or both, is initiated as provided in section
12 334-60.3. If that time expires on a Saturday, Sunday, or
13 holiday, the time for initiation is extended to the close of the
14 next court day. Upon initiation of the proceedings the facility
15 shall be authorized to detain the patient until further order of
16 the court."

17 SECTION 4. Section 334-60.2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§334-60.2 Involuntary hospitalization criteria.** A person
20 may be committed to a psychiatric facility for involuntary
21 hospitalization[~~r~~] if the court finds[~~r~~] that the person is:



- 1 (1) ~~[That the person is mentally]~~ Mentally ill or
- 2 suffering from substance abuse;
- 3 (2) ~~[That the person is imminently]~~ Imminently dangerous
- 4 to self or others~~[?]~~, gravely disabled, or obviously
- 5 ill; and
- 6 (3) ~~[That the person is in]~~ In need of care or treatment,
- 7 or both, and there is no suitable alternative
- 8 available through existing facilities and programs
- 9 ~~[which]~~ that would be less restrictive than
- 10 hospitalization."

11 SECTION 5. This Act does not affect rights and duties that

12 matured, penalties that were incurred, and proceedings that were

13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed

15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.

17

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H.B. NO. 35

Report Title:

Mental Illness; Involuntary Hospitalization; Criteria

Description:

Restores the categories of "gravely disabled" and "obviously ill" to the criteria for involuntary hospitalization that were deleted by Act 221, SLH 2013. Increases the maximum period of emergency hospitalization from 48 hours to 72 hours.

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

