



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2680, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

**DATE:** Wednesday, February 5, 2020 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Erin K.S. Torres, Deputy Attorney General

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Chair San Buenaventura and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

This measure restores the categories of “gravely disabled” and “obviously ill” to the criteria for involuntary hospitalization and increases the period of emergency hospitalization from 48 hours to 72 hours. The intent is to protect individuals suffering from mental illness or substance abuse as well as members of the public by expanding the standards for involuntary hospitalization.

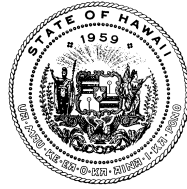
As it is written, this bill is subject to constitutional challenge because imminent danger is required prior to involuntary hospitalization by *Suzuki v. Yuen*, 617 F.2d 173, 178 (9th Cir. 1980) (Court declaring that it is unconstitutional to commit one who does not pose an imminent danger); *see also, In re Doe*, 102 Hawai’i 528, 78 P.3d 341 (App. 2003). It is unclear whether grave disability or obvious illness are equivalent to imminent danger.

However, while the United States Supreme Court has required a showing of dangerousness in civil commitment proceedings, deference is given to state legislatures to define the term. *In re Doe*, 102 Hawai’i at 548-49, 78 P.3d at 361-62 (citations omitted). The current definition of “[i]mminently dangerous to self or others” under section 334-1, Hawaii Revised Statutes (HRS), is “without intervention, the person will

likely become dangerous to self or dangerous to others within the next *forty-five days*.” (Emphasis added.) A broader interpretation of the term could better fulfill the intent to protect communities and provide necessary treatment to individuals posing a danger to themselves or others. Therefore, we suggest that the Committee consider redefining “imminently dangerous to self or others”. The Committee may look to chapter 587A, HRS, also known as the Child Protective Act, for guidance. Under section 587A-4, “imminent harm means that without intervention within the next *ninety days*, there is reasonable cause to believe that harm to the child will occur or reoccur.” (Emphasis added.)

Thus, instead of restoring the categories of “gravely disabled” and “obviously ill”, we recommend the following definition be amended in section 334-1, HRS: “Imminently dangerous to self or others” means that, without intervention, the person will likely become dangerous to self or others within the next *ninety days*. (Emphasis added.) This change in definition of “imminent” from forty-five days to ninety days would serve the intent of the Legislature and yet maintain a clear standard that strikes the appropriate balance between protecting the community and protecting the constitutional rights of individuals suffering from mental illness or substance abuse.

If the Committee chooses to pass this measure, we respectfully ask that it make the amendment suggested by the Department.



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony COMMENTING on H.B. 2680**  
**RELATING TO MENTAL HEALTH**

REPRESENTATIVE JOY A. SAN BUENAVENTURA, CHAIR  
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

Hearing Date and Time: Wednesday, February 5, 2020 at 9:00 a.m. Room: 329

1 **Department Position:** The Department of Health (“Department”) supports the intent of this  
2 measure offering comments and proposed amendments.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the  
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a  
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,  
6 private and community resources. Through the BHA, the Department is committed to carrying  
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and  
8 person-centered. The BHA’s Adult Mental Health Division (AMHD) provides the following  
9 testimony on behalf of the Department.

10 The Department supports addressing the needs of individuals who live with behavioral  
11 health issues and who are chronically homeless including provision of services by mental health  
12 emergency workers, emergency examinations, emergency admissions, and, if necessary,  
13 involuntary commitment.

14 Regarding the insertion of the proposed definitions for “gravely disabled” and  
15 “obviously ill” into Section 334-1, Hawaii Revised Statutes, the Department believes these  
16 definitions may not be consistent with Federal case law and a decision by the Hawaii Supreme  
17 Court requiring a finding of imminent risk for involuntary hospitalization.

1           The current statutory language in Section 334-1, Hawaii Revised Statutes, defines  
2 “dangerous to self” as to indicate that an individual is “unable, without supervision and the  
3 assistance of others, to satisfy the need for nourishment, essential medical care, shelter or self-  
4 protection” due to a mental illness or related to suffering from substance abuse.

5           This current definition, which applies to initiating and conducting an emergency  
6 examination, emergency admission, and proceedings for involuntary commitment, already  
7 includes provisions for individuals who meet the criteria specified in the definitions of “gravely  
8 disabled,” and “obviously ill.” Therefore, the Department respectfully requests that the  
9 definitions for “gravely disabled” and “obviously ill” not be included in section 334-1, Hawaii  
10 Revised Statutes, or in section 334-59, Hawaii Revised Statutes.

11           The Department, in collaboration with state agency partners through the task force and  
12 working group of Act 90 and Act 263 Session Laws of Hawaii, 2019, supports strengthening our  
13 behavioral health system especially the community continuum of supports and services,  
14 through thoughtful revision of law, changed policies, enhanced and expanded programs, and  
15 continued partnership with stakeholders. We will continue to coordinate with stakeholders  
16 including prosecutors and ACLU members to address the needs in our current care continuum.”

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

18           **Offered Amendments:** None.

19           **Fiscal Implications:** Undetermined.

STATE OF HAWAI‘I  
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,  
State of Hawai‘i to the House Committee on  
Human Services & Homelessness

February 1, 2020

H.B. No. 2680: RELATING TO MENTAL HEALTH

Hearing: Wednesday, February 5, 2020, 9:00 a.m.

Chair San Buenaventura, Vice Chair Nakamura and Members of the Committee:

We respectfully oppose passage of H.B. No. 2680, which would greatly broaden the categories of persons who are subject to emergency hospitalization against their will and involuntary hospitalization. It also proposes to increase the maximum period of emergency hospitalization from 48 to 72 hours.

**“Gravely disabled” and “obviously ill”**

Currently, the emergency hospitalization and involuntary hospitalization law requires the authorities to show that the subject of the hospitalization is “imminently dangerous to self or others.” H.B. No. 2680 would dispense with that requirement and require only that the subject is either “gravely disabled” or “obviously ill.” The broad definition of these terms would allow for the immediate hospitalization of almost any person currently on our streets who is outwardly suffering from a mental illness.

The change suggested by this bill would dramatically lower the standard by which a person would be civilly committed to a psychiatric facility against his/her will and would result in a much greater number of court-ordered hospitalizations. The suggested change is likely unconstitutional and violates Suzuki v. Alba, 438 F.Supp. 1106 (D. Haw. 1977), which held that the simple “dangerousness” element was too broad and ambiguous as to the degree of danger required for civil commitment. Citing to the United States Supreme Court case, Humphrey v. Cady, 405 U.S. 504, 31 L.Ed.2d 394, 92 S.Ct. 1048 (1972), the United States District Court stated,

The Supreme Court has stated that the degree of dangerousness constitutionally required before one may be involuntarily deprived of his liberty must be “great enough to justify such a massive curtailment of liberty.” Humphrey v. Cady, 405 U.S. 504, 509, 31 L. Ed. 2d 394, 92 S. Ct. 1048 (1972). This language has been interpreted as implying a balancing test where the state must prove the extreme likelihood that an individual will do immediate harm to himself or others if not confined. Lessard v. Schmidt, *supra*, 349 F. Supp. 1078, 1093 (E.D. Wis. 1972) (three-judge court). The proper standard is that which requires a finding of

*imminent* and *substantial* danger as evidenced by a recent overt act, attempt or threat. Id. at 1093-94.

Suzuki v. Alba, 438 F. Supp. at 1110 (emphasis in original).

The State of Hawai'i is in a crisis situation with regard to a shortage of psychiatric bed space and is not able to handle a large influx of court-ordered patients. The current standard ensures that only those who are in absolute need of forced hospitalization are so confined.

If the purpose of the bill is to force mentally ill persons off the streets and into facilities, this measure could end up causing the government more problems in the form of overcrowded psychiatric facilities than it solves. Moreover, detaining persons against their will is an unacceptable solution to the homeless issue.

If this bill is trying to address the situation of a person who is severely mentally ill, living on the streets and unable to care for oneself, the current law already provides for involuntary hospitalization. In such a case, it could easily be argued and proven to the court that the person is imminently dangerous to himself or herself.

#### **Increasing maximum time for emergency hospitalization**

H.B. No. 2680 also increases the maximum time for emergency hospitalization from 48 to 72 hours. We oppose this change. This would allow a person to be held *without a court hearing* for three (3) days and, in some cases, up to five (5) or six (6) days if a weekend or holiday occurs during the detention. This exceedingly long detention period based upon a police officer's and mental health emergency worker's judgment is unjustifiable.

The provisions of this bill would make it far too easy to conduct a mass sweep and detain all persons who suffer from mental illness and are unable to follow instructions by the authorities. The solution for dealing with our significant mentally ill population is not to detain and warehouse but to provide for sufficient treatment resources in the community.

Thank you for the opportunity to comment on H.B. No. 2680.

**HB-2680**

Submitted on: 1/30/2020 5:40:24 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Erteschik	Hawaii Disability Rights Center	Comments	Yes

Comments:

It is our understanding that the essence of the terms “gravely disabled” and “obviously ill” have been incorporated into the expanded definitions in Hawaii law of the term “imminently dangerous.” We believe a very similar discussion occurred last session and that the consensus was that revisiting those old terms was unnecessary and would raise potential constitutional concerns.

The issue of the time frame for the emergency hold was discussed at the Taskforce convened pursuant to HB1013. There seemed to be some ambiguity either in the law or in practice as to when the clock actually starts on the 48 hours. Is it when the person arrives at the hospital? If they wait for several hours to be seen in the emergency room does that count towards the 48 hours? There was a lot of discussion about seeking to clarify that, though no legislation has been proposed to our knowledge. While some may advocate for a 72 hour hold, there did not seem to be any impetus from the Taskforce to put that forward at this point.

**HB-2680**

Submitted on: 1/28/2020 4:36:25 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shyla Moon	Individual	Support	No

Comments:

This would help some of the houseless people we see on our islands. Many need mental healthcare and refuse help when they truly need it. Thank you for introducing this.



**HB-2680**

Submitted on: 1/28/2020 5:37:41 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Miller	Individual	Support	No

Comments:

HB 2680 is a bill to establish a law that will better help agencies, law enforcement and social workers to provide care to people who have mental illnesses that prevent them from thinking rationally. Well-meaning people cannot persuade paranoid, violent, or unstable individuals that they need help, or that available medications would make their lives happier, safer and healthier. Please pass this bill to promote community safety and promote the welfare of those with mental illnesses. Thank you for your attention to this important issue.

Anne M. Miller

**HB-2680**

Submitted on: 1/29/2020 1:19:33 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Terez Amato Lindsey	Individual	Support	No

Comments:

\$13 an hour isn't enough. Please amend this bill to raise the minimum wage to \$17/hour. Thank you.

Thank you,

Terez Amato Lindsey, Maui SD6

**HB-2680**

Submitted on: 1/29/2020 5:05:32 PM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Banner Fanene	Individual	Oppose	No

Comments:

Trash. I do not support Laws that force people against their will and harm them in the process

Rep. Joy A. San Buenaventura, Chair  
Rep. Nadine K. Nakamura, Vice Chair  
Committee on Human Services and Homelessness

Julie Anne Bacarro  
University of Hawai`i at Mānoa Student  
Contact Number: (808)342-1683

Wednesday, February 5, 2020

Support of H.B. No. 2680, Relating to Mental Health.

Good morning Chair San Buenaventura and Vice Chair Nakamura. My name is Julie Anne Bacarro. I am a student from the University of Hawai`i at Mānoa. I come before you as a mental health community member and advocate.

I am in support of H.B. No. 2680, Relating to Mental Health. I will be sharing a story about my close friend, who I consider my hānai sister, and her partner. It is important to highlight that my sister's partner is not diagnosed with a mental illness nor received treatment. He has a history of suicidality and believes he has symptoms of borderline personality disorder.

My sister called me in distress after her and her partner got into an argument. She told me that they got into physical altercation that involved a sharp object. Her partner was threatening to harm himself in front of her. My sister tried to get the sharp object out of his hand. Which she did after a tough fight. Her roommate called the police and they arrived shortly after. The police did not talk to my sister. They only talked to her partner. The police treated this incident as a domestic violence case. The police told him that he needs to stay somewhere else for the next few days. He left for the day, but the last thing I heard from my sister is that she invited him back home. I was angry that she let him back into the home the same night this conflict happened. What I learned later in the week, surprised me. My sister told me that her partner attempted suicide twice during his early adulthood before meeting each other. He went to the hospital a few times for help. His experience at the hospital was short. The hospital did not keep him overnight. He lost faith in reaching out for help. He refused to see a therapist, he refused to go to a support group, and he refused to go back to the hospital. He could not bear more rejection.

In this bill, it states that "Hawaii's current standard for involuntary hospitalization does not adequately prevent harm, either to persons suffering from mental illness or substance abuse, or to members of the public." The hospital turned him away because he did not show "imminently dangerous to self or others" at the time he arrived. This was actually hurting my sister's partner, my sister, and the ones who love and care about them, which includes me. I then became upset with current policies in place. I think about this story that my sister shared with me every day. Through this bill, my sister's partner would have been categorized as "obviously ill". Then the hospital would have admitted him and offered him the help he deserved. That argument would have not happened. If it did, I would have hoped that the police would have taken him into custody and transported to a facility that would help him with his suicidality.

I am in support of H.B. No. 2680, Relating to Mental Health. With this bill, I hope it would give hope to individuals who are suffering with suicidality to come into the hospital for help. That they would not be refused for their bravery to admitting they are suffering from suicidality and receive the help they deserve.

**HB-2680**

Submitted on: 2/4/2020 8:02:37 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ellen Godbey Carson	Individual	Support	No

Comments:

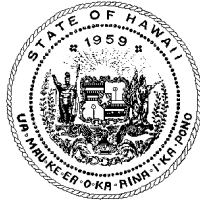
I am in strong support of this bill, and am a retired attorney who has spent much of my career assisting the most vulnerable persons in our society, including those with mental illness. I am a former president of the Hawaii State Bar Association, the Hawaii Women Lawyers, Institute for Human Services (IHS) and Hale Kipa (youth shelters), testifying here on my own behalf. I believe this bill strikes a better balance for safeguarding our most vulnerable and protecting their human rights.

Gravely mentally ill persons are homeless and dying on our streets because we deem them not "imminently" dangerous to self or others, and so do not intervene as they die before our eyes. Yet, our Medical Examiner reports that at least 127 homeless persons died in 2019, with an average age of death of 54, far below the national average of 78.6 years. Similar numbers of our homeless residents died in 2018, at an average age of 53. Without the changes sought by this bill, we will continue to deprive our mentally ill residents of life-saving treatment and stabilization they need.

I believe our best path forward at this time is via the changes sought by this bill, as we simultaneously work on better community alternatives and least restrictive treatments for our mentally ill residents.

Ellen Godbey Carson

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
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**NOLAN P. ESPINDA**  
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**Shari L. Kimoto**  
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Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 2680  
RELATING TO MENTAL HEALTH.**

by

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Human Services and Homelessness  
Representative Joy A. San Buenaventura, Chair  
Representative Nadine K. Nakamura, Vice Chair

Wednesday, February 5, 2020; 9:00 a.m.  
State Capitol, Conference Room 329

Chair San Buenaventura, Vice Chair Nakamura, and Members of the Committee:

The Department of Public Safety (PSD) strongly supports House Bill (HB) 2680, which seeks to restore, in statute, the categories of “gravely disabled” and “obviously ill” to the criteria for involuntary hospitalization that were deleted by Act 221, SLH 2013, and increase the maximum duration of emergency hospitalization from 48 hours to 72 hours. The Department respectfully offers the following comments.

The Involuntary Commitment/Court-ordered Treatment section of the 2016 Public Policy Platform published by the National Alliance on Mental Illness provides clear guidance on currently acceptable standards of mental health care in situations involving involuntary hospitalization. The Department appreciates the actions of the Legislature through such preventative means, given the more recent, available information on the matter, as identified and proposed in HB 2680. The potential impact on jail diversion that the measure would realize, through expansion and flexibility of the inclusion criteria for involuntary hospitalization, is significant.

Over the years, the Department experienced increasing rates of criminalization of the mentally ill in our jails and prisons. HB 2680 supports the overall movement in Hawaii towards community-based mental health treatment, which we believe will help to reduce unnecessary incarceration. HB 2680 also meaningfully provides an opportunity to improve coordinated mental health care in the community with the inclusion of Assisted Community Treatment on an outpatient basis.

Thank you for the opportunity to provide testimony on HB 2680.



To: The Honorable Joy A. San Buenaventura, Chair  
The Honorable Nadine K. Nakamura, Vice Chair  
Members, Committee on Human Services and Homelessness

From: Rowena Buffett Timms, Executive Vice President & Chief Administrative Officer, The Queen's Health Systems  
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: February 4, 2020

Hrg: House Committee on Human Services and Homelessness Hearing; Wednesday, February 5, 2020 at 9:00 a.m. in room 329

Re: **Comments for HB 2680, Relating to Mental Health**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer comments on HB2680, Relating to Mental Health. This measure would restore the categories of "gravely disabled" and "obviously ill" to the criteria for involuntary hospitalization and increase the maximum period of emergency hospitalization from 48 hours to 72 hours.

We appreciate the intent of this measure to increase access to mental health services by making the standard more flexible for involuntary hospitalization. However, we are concerned that the bill will increase volume for involuntarily committed mental health patients at The Queen's Medical Center, Punchbowl (QMC-PB). MH-1 is a designation given to individuals transported to hospitals by the law enforcement who have reason to believe that the person is imminently dangerous to self or others. QMC-PB has experienced disproportionate increases in the numbers of MH-1s brought to our facility over the years. In calendar year 2019, over 1,600 individuals were brought in on an MH-1. Of those individuals, over half did not meet the criteria for involuntary hospitalization.

For the patients who are involuntarily committed, our facility is unable to provide that treatment without a Court Order. There are no statutes in place to specify the standards that must be met before the Court will order treatment. As a result, many patients who are involuntarily committed, languish at our facility as they wait for the court order to treat. If the committee decides to pass this measure, we would request that additional resources be allocated to providers of acute care psychiatric services. Thank you for the opportunity to testify on this measure.

*The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.*



**HB-2680**

Submitted on: 2/5/2020 10:05:38 AM

Testimony for HSH on 2/5/2020 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane S. Martinson	Individual	Support	No

Comments:

I am in support of HB2680. Broadening the law to provide care for those who are unable to realize that care is needed is the humane and right thing to do. My church is downtown, and we repeatedly encounter those who are wandering, confused souls, some with open wounds. Their speech is mostly incoherent, and they refuse care because they don't know they need it. Letting these fellow human beings wander the streets, lost within minds that are not functioning properly, without proper food, hygiene, or medical care, is not humane. We should ask ourselves, would we want to be left to wander in confusion? We have no problem recognizing the need to treat broken bones. We need to recognize the need to treat illness within the mind, too. Choice is excellent when someone's mind is well enough to make a choice.