HB-310-HD-1
Submitted on: 2/12/2021 7:13:35 PM
Testimony for JHA on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

Comments:

We see this as a well-intentioned bill that is a work in progress, but still has a lot of legal and drafting issues that need to be addressed.

While we are not specifically opposed to Section 2 of this bill, we question what it will accomplish. The current law of “45 days” was a compromise the legislature reached a few years ago and the provision does not seem to have been an issue since then. The term “imminently dangerous” traditionally meant what the term implies-something that will occur relatively soon. When the current law was amended, the Attorney General at that time was advocating for a 90 day window. We suggested at that time that perhaps a 30 day timeline might be appropriate. The legislature compromised on 45.

This a policy decision and if the legislature believes that the additional time will bring more people into treatment then perhaps that is sufficiently beneficial to amend the law. Will the 90 day window really provide a better outlook for an examiner? We are not convinced that is so, but we don’t discount that possibility. On the other hand, there are stakeholders who will likely oppose the changes more strenuously than we do, and if this provision were ever to be tested in the courts, as a matter of constitutional law we continue to believe that a longer time window may be harder to justify.

The language of Section 3 of the original bill was very problematic. We have been told that the intent is to allow for the use of longer acting psychotropic medication. Currently, hospitals tend to stabilize individuals and “send them on their way“, merely to see them again shortly. Eliminating the cycle of the revolving door is a worthwhile goal certainly. However, the language here is still loose and open ended. “Decisional capacity” is not defined. Nor is the form of involuntary treatment specified, though the HD 1 version does include mention of longer lasting psychotropic medication and that is an improvement over the original bill. No time limit is set forth for the course of treatment, nor is there any trigger for a judicial proceeding. We cannot believe that the intent is that an individual can be brought to a hospital under the current state of the law and then involuntary medicated forever. Or until someone decides they have regained capacity. All of this without any provision for a Judge to actually agree to this.

The prior Committee inserted at the end of Section 3 language suggested by the Attorney General, regarding the appointment of a surrogate or a guardian. We are open to this as a possible way to provide treatment, though we are not certain how exactly it would work or how effective it would be. We don't believe this provision of the law has been used in this context previously, and it is not clear how long it would take to find a surrogate and whether the person could be held at the hospital while all that was occurring. So, we have a lot of unanswered questions. However, as stated at the outset we see this as a work in progress so we assume that as the language gets vetted it will become clearer.

Marya Grambs
140 Kaelepuu Drive. Kailua HI 96734
Ph 808.778.9178 email mgrambs@gmail.com

TO: Rep. Mark M. Nakashima, Chair; Rep. Scot Z. Matayoshi, Vice Chair; and members, Committee on Judiciary and Hawaiian Affairs
FR: Marya Grambs
RE: SB310HD1; IN STRONG SUPPORT

Please think for a minute of Alzheimer's: If you found a person with Alzheimer's dementia confused and wandering on the streets, you wouldn't say, well, let's just talk to them for a little while and let them go back on the street; you would take care of them, regardless of what they said, because they have a brain disease! Severe psychosis is a brain disease not unlike dementia, according to Dr. Matthew State, Chair, Department of Psychiatry, University of California San Francisco. People suffering from this brain disease deserve no less help than we would afford people with Alzheimer's. Few people would argue that someone suffering from severe dementia has a human right to wander the streets in a state of confusion and delusion.

Enabling our hospitals to provide long-acting antipsychotic medication to people in the throes of acute psychosis makes sense and will save lives. I urge you to support this bill.

I know you will hear from people concerned about their civil liberties. I appreciate that concern; but I believe that it is a denial of one's civil liberties to consign people to lives of degradation, despair, and danger. I believe that people have a right to treatment, and that our current system deprives many of that right.

I have spent several years volunteering at an emergency homeless shelter. I have seen firsthand the terrible human toll severe mental illness and homelessness takes. It's devastating to witness people suffering from the scourge of psychosis - hallucinating, delusional, living in extremely degrading circumstances, unable to take care of themselves, vulnerable to being preyed upon - being discharged to the unhealthy and inhumane environment from which they came.

And the greatest tragedy is that they do not know they are ill so of course they don't want to take medication – would you take medication if you didn't think you were sick? This is a symptom of their illness. This symptom deprives them of the ability to make informed, rational decisions about treatment.

If, however, while they are in this incapacitated and delusional state, they can be given a long-acting antipsychotic medication, they have a fighting chance to escape this horrendous, soul-destroying cycle. There are now stabilization beds where they can become stable on the medication and be supported to find services that will help them regain their health and become housed.

HB310 HD1 Involuntary Commitment for Substance Abuse and Mental Illness

COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS:

- Rep Mark Nakashima, Chair; Rep. Scott Matayoshi, Vice Chair
- Tuesday, Feb. 16, 2021: 2:00 pm: Videoconference

Hawaii Substance Abuse Coalition Supports HB310 HD1:

OOD MORNING CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the CEO of Hina Mauka, providing services for substance use disorder and mental health including programs for prevention, adult addiction treatment, adolescent treatment, case management, and withdrawal management. Helping people on Oahu and Kauai.

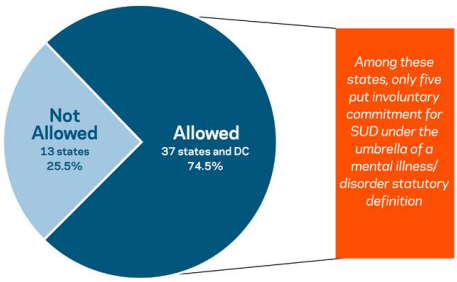

Figure 1. Legal Provision for Involuntary Commitment for Substance Use Disorders among U.S. states and DC (N=51)[8]

For individuals with severe substance use disorder, several states are now implementing involuntary commitment laws for the first time or proposing changes to existing laws that would remove barriers to make commitment less difficult.

The substance abuse treatment gap between the need and access stems from stigma, lack of available effective treatment and the inability of some individuals to seek treatment voluntarily.[1]

- Relatives and loved ones of an individual with a substance use disorder often feel helpless and disempowered when that individual is unable, due to an impaired brain, to make the rational decision to undergo and complete addiction treatment.
- Situations can escalate to the point where relatives and loved ones feel unsafe or are afraid that the individual with the substance use disorder is at great risk for overdose and/or death.

[1] Hazelden Betty Ford Foundation: Involuntary Commitment for Substance Use Disorders: https://www.hazeldenbettyford.org/education/bcr/addiction-research/involuntary-commitment-edt-717

- Involuntary commitment laws for substance use disorder can be be a way to initiate the treatment these individuals need to avoid death and ultimately re-establish productive and healthy lives.

Involuntary Commitment to 90 days. Several states have changed the commitment to 90 days because a criticism of some current civil commitment laws is that the length of stay for individuals with a substance use disorder is insufficient. Several assert that effective treatment for severe substance use disorder must last at least 90 days.[2]

What Does it Take for Civil Commitment?

1. Casey's Law in Kentucky allows family members to exercise civil commitment if the disorder and risk have clearly grown severe and grave. It's allowed if the family can demonstrate a desperate situation such as after multiple overdoses and the loss of home, job, children, car, insurance, self-esteem and hope," Family members report "The only thing left to lose is their loved one's life. That is the right the family is trying to protect—their loved one's right to live."

2. Almost all states now allow a family member to petition the court to get an individual involuntarily committed to drug and alcohol addiction treatment. Most states allow a spouse, guardian, relative, medical professional or administrator of the treatment facility to petition the court for involuntary commitment. However, some states will allow a friend or any responsible person to petition, and in at least one state, police officers are allowed to do so.

What Treatment is Best. People with severe substance use disorder are often recommended residential treatment that can ultimately transition, or step down, to outpatient treatment and other lower levels of care. Such determinations are made by professionals based on criteria established by the American Society of Addiction Medicine.[3] Addiction is like other chronic illnesses in that the sooner it is recognized and the longer it is treated, the better the chances of recovery.

We appreciate the opportunity to provide testimony and are available for questions.

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2 National Institute on Drug Abuse. (2012). Principles of drug addiction treatment: A research-based guide. Rockville, MD: National Institutes of Health.

3 Mee-Lee, D. E. (2013). The ASAM criteria: Treatment criteria for addictive, substance-related, and co-occurring conditions. Rockville, MD: American Society of Addiction Medicine.

TO THE HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021
COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. Mark M. Nakashima, Chair
Rep. Scot Z. Matayoshi, Vice Chair
NOTICE OF HEARING
DATE: Tuesday, February 16, 2021
TIME: 2:00 PM
PLACE: VIA VIDEOCONFERENCE
Conference Room 329
State Capitol
415 South Beretania Street

POSITON: <u>STRONG SUPPORT HB130HD1</u>

Bill HB 310 is both necessary and humane, the passage of HB 310 supports the current ACT (Assisted Community Treatment) program by amending HRS 334-59 (and all other relevant statute language) to allow for a person suffering from severe mental illness or substance abuse to receive timely and appropriate care and treatment. Through the passage of this bill, persons that are brought to an emergency department for evaluation, hospitalized in a psychiatric facility, under an emergency hospitalization or involuntary commitment order, or while being considered for assisted community treatment will benefit from this policy change.

Speaking of my personal experience I have seen many times where enabling language could have been used to allow for persons that do not seem to have "decisional capacity" or present symptoms that may indicate a serious mental illness or severe substance use disorder. Symptoms such as defecating in the open and taking one's hand smearing defecation on walls, urinating on themselves out in the public space, engaging in lewd self-stimulatory behavior in public, yelling and screaming at as to have a conversation with someone or something that does not appear to typical members of the population.

If one were to walk down Chinatown, or parts of King Street or even as was mentioned recently in the news regarding the location of the former Walgreens on Keeaumoku Street and the issues that business owners along with pedestrians are encountering; we can see that there is a definite need for this bill and its passage. This bill is not meant as a mechanism for removing persons as mentioned in the bill for society to keep them "out of sight out of mind" Rather, this bill is to provide the hope and care that we should expect society to deliver with sympathy and compassion and the hope that one day that person under care may be able to integrate back in typical society.

In closing, this bill should pass out of this committee and is a step in the right direction toward a clinical approach in dealing with treatment-resistant populations along with providing for increased health and safety of the population. All amendments to this bill should be with the intent of reducing possible ambiguous language or enhancing the intent of the enabling language. Thank you for taking the time in reading my testimony.

Mahalo,

Kendrick Farm

2/14/2021

State House Committee on Judiciary and Hawaiian Affairs
Hearing on Tuesday, 2/16/2021 2:00 p.m.
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

From: Connie Mitchell, MS, APRN
Executive Director
IHS, The Institute for Human Services, Inc.

Re: Testimony in Support of HB310 HD1, Emergency hospitalization and mental health treatment

IHS, The Institute for Human Services has been a critical safety net of our community for over 42 years. We provide a full spectrum of services to help those in our community experiencing homelessness to achieve housing and those who are on the precipice of homelessness to remain stably housed. **IHS stands in strong support of SB310 HD1.** The changes put forth by this bill on emergency hospitalization are necessary to halt the revolving door at our emergency rooms that receive seriously mentally ill persons or those afflicted with co-occurring substance use disorders like methamphetamine addiction.

The first draft of HB310 engendered some legal concerns about involuntary treatment, seemingly without due process and protection of civil liberties. I would like to address these concerns with comments and then offer a few recommendations to further refine the bill to invite those who had concerns to more comfortably support this bill.

1. The Public Defender's office argues that the bill authorizes involuntary treatment based on the opinion of one provider, for an indefinite period of time, with no provision for judicial review. In fact, there already exist situations where an individual service provider can determine decisional capacity, such as when a petition for guardianship is filed. Judges typically grant those petitions based on the assessment of one qualified individual. The bill as amended now also brings into the situation the potential appointment of a surrogate decision maker who can speak in the best interest of the individual, again with provisions for judicial review.

2. We recommend the addition of a limited period of time that treatment could be administered over objection, for up to 30 days, (insert "for up to 30 days" into Page 4, line 4 after "may be treated involuntarily,..). This would allow time for an individual to benefit from treatment sufficiently to regain decisional capacity and begin making their own treatment decisions. In many cases, it only requires hospitalization of 7-10 days to allow return to the community when supportive services and a place to stabilize is provided in the community. But treatment must continue consistently even after discharge for the 30 days. This relatively brief time of treatment would provide sufficient time to put in place a surrogate decision maker, file for an assisted community treatment order, or seek guardianship in the cases where it is determined that it is appropriate.

3. The new amendment added to HB310 requires an assessment of whether a surrogate or guardian is needed to make appropriate decisions for the person. This action would afford an opportunity for due process and judicial review as provided by these existing processes.

4. Loss of decisional capacity is challenged as being undefined, but those terms are used in HRS 327E-5 (surrogacy) and HRS 302A-493 (educational representatives for special needs students). In HRS 327E-1 (surrogacy), "Capacity" is defined as an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision. While we find no definition in HRS for "decisional capacity," it appears "decisional capacity" is used interchangeably with "capacity," which is already defined.

Currently, seriously mentally ill persons who may be brought to an emergency room on an oral *ex parte* court order, might be treated with oral medications or even injections to calm them. But they are usually not administered a long-acting injectable antipsychotic medication which could begin to resolve their decisional capacity, cognition, memory, organized thought, executive function and judgment. Instead, when the patient refuses treatment, they are released back into the community until the next time they are found endangering themselves or others, and brought back into the hospital. Or worse yet, people realize that nothing will happen and the individual is left to languish on the streets until a medical emergency once again prompts an EMS call to transport to the emergency department or the person dies of medical conditions that go untreated.

This bill allows for a licensed psychiatrist or psychiatric advanced practice registered nurse with prescriptive authority, to diagnose mental illness and treat the individual, even if the patient does not choose it. This is potentially life-saving treatment that can restore that individual's cognitive abilities to allow them to live a healthier life overall with greater freedom in the community, thereby preserving their civil liberties.

This bill also permits the use of injectable long-acting antipsychotic medications, instead of limited short-acting oral or injectable medication. This is very helpful for individuals who may have a very difficult time remembering to take their medications on a daily basis, as is the case especially with someone who is homeless. Injectable, long-acting antipsychotic medications can last 30 -90 days.

Over 100 of our homeless residents are dying on our streets each year, at an average age of only 53-54. Deaths of homeless people continue to climb on Oahu | Honolulu Star-Advertiser In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street. These dangers are most vivid when a person suffering from severe mental illness or substance abuse no longer has decisional capacity for life-saving medical intervention and self preservation. Abandoning these individuals to their "freedom" to live on the streets while severely disabled is a death sentence for many of them. And yet, they are someone's son or daughter, parent or loved one, and they deserve the same caring and curative treatment as would be offered to those with other life-threatening medical conditions.

Medication, in and of itself, is not the only treatment that persons suffering severe mental illness or co-occurring substance use disorders need in order to recover. Psychosocial rehabilitation, housing and a supportive community are also critical to helping an individual recover their functionality and purpose in life, their abilities to contribute and to enjoy the liberties afforded all of us in this state. However, the ability of a person to participate and engage in rehabilitation is severely limited if the individual is not stabilized with antipsychotic medication, so as to be able to regain their decisional capacity. As it

stands now, the people most likely to benefit from emergency treatment described in this bill, are subject to “deliberate indifference” by our healthcare and legal system, left to fend for themselves with no hope for escaping the traumatic experience of living homeless on the streets.

Thus, this bill strikes an appropriate balance by allowing a short duration of involuntary treatment for these incapacitated persons, to help stabilize them person and allow them to regain their decisional capacity. In so doing, we can help avoid the very real dangers of irreversible disability and death that these severely ill persons face if they are left on their own on the streets.

Please pass HB310 HD1 and afford people the hope and treatment they deserve and to which they have a right. You will be transforming many lives with your action.

Thank you for considering my testimony, offered on behalf of IHS and the many homeless mentally ill people we continue to serve and protect across our island.

HB-310-HD-1
Submitted on: 2/14/2021 10:30:47 PM
Testimony for JHA on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thaddeus Pham	Individual	Oppose	No

Comments:

I strongly oppose HB310 because of its potential impact on our disabled, LGBTQIA+, and marginalized community members . First and foremost, the patients' values and preferences are not being respected, although the fundamental human right to equal recognition before the law applies to everyone, also to people with mental disorders. Second, it has never been shown that forced treatment does more good than harm, and it is highly likely that the opposite is true. A register study of 2,429 suicides showed that the closer the contact with psychiatric staff – which often involves forced treatment – the worse the outcome.

Kealahou West Oahu
87-132 Farrington Hwy, Waianae, HI 96792
P.O. Box 1912, Waianae, Hi 96792
Ph: (808) 696-5667 Fax: (808) 696-1869

Bldg 50 & Bldg 48 Belleau Woods, Kapolei, Hi 96707
Ph: (808) 782-4342
admins@kwohawaii.org

Mission
Provide Comprehensive services with Aloha to individuals & families in need so they can become Self-Sufficient
Vision
Healthy Self-Sufficient Resilient Individuals & Families
Values
U nderstanding
R espect
R esponsibility
I ntegrity
C ompassion
H onesty

Partnerships in Building Community
"I put my hand in your hand, what I cannot do alone, we will do together"

TO THE HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021
COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS
Rep. Ryan I. Yamane, Chair
Rep. Adrian K. Tam, Vice Chair

NOTICE OF HEARING
DATE: Thursday, February 4, 2021
TIME: 9:00 AM
PLACE: VIA VIDEO CONFERENCE
Conference Room 329
State Capitol
415 South Beretania Street

POSITON: <u>STRONG SUPPORT</u>

Bill HB 310 is both necessary and humane, the passage of HB 310 supports the current ACT (Assisted Community Treatment) program by amending HRS 334-59 (and all other relevant statute language) to allow for a person suffering from severe mental illness or substance abuse to receive timely and appropriate care and treatment. Through the passage of this bill, persons that are brought to an emergency department for evaluation, hospitalized in a psychiatric facility, under an emergency hospitalization or involuntary commitment order, or while being considered for assisted community treatment will benefit from this policy change.

Speaking of my personal experience I have seen many times where enabling language could have been used to allow for persons that do not seem to have "decisional capacity" or present symptoms that may indicate a serious mental illness or severe substance use disorder. Symptoms such as defecating in the open and taking one's hand smearing defecation on walls, urinating on themselves out in the public space, engaging in lewd self-stimulatory behavior in public, yelling and screaming at as to have a conversation with someone or something that does not appear to typical members of the population.

This bill is not meant as a mechanism for removing persons as mentioned in the bill for society to keep them "out of sight out of mind" Rather, this bill is to provide the hope and care that we should expect society to deliver with sympathy and compassion and the hope that one day that person under care may be able to integrate back in typical society.

In closing, this bill should pass out of this committee and is a step in the right direction toward a clinical approach in dealing with treatment-resistant populations along with providing for increased health and safety of the population. All amendments to this bill should be with the intent of reducing possible ambiguous language or enhancing the intent of the enabling language. Thank you for taking the time in reading my testimony.

Mahalo,

Tanya Tehotu

STATE OF HAWAIʻI

OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender, State of Hawaiʻi to the House Committee on Judiciary & Hawaiian Affairs

February 16, 2021

H.B. No. 310 HD1: RELATING TO MENTAL HEALTH

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

We respectfully oppose passage of H.B. No. 310 HD1, which would greatly broaden the term of "imminently dangerous to self and others." It also proposes to authorize the involuntary treatment of patients who are subject to emergency hospitalization without proper judicial review and in violation of the patients' due process rights.

1. Forty-five days to ninety days

Currently, "imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next forty-five days. Without any justification, this measure seeks to amend the definition by increasing the number of days from forty-five days to ninety days. Neither professional psychiatric opinions nor data has been offered to support the necessity to amend the definition.

Previously, the Department of the Attorney General's (DAG) submitted written testimony relying on HRS chapter 587A, also known as the Child Protective Act, which defined "imminent harm" as "without intervention within the next ninety days, there is reasonable cause to believe that harm to the child will occur or reoccur." The definition used in a "child protective" context has no application in the context of an "involuntary hospitalization."

The U.S. Supreme Court (Addington v. Texas, 441 U.S. 418, 99 S.Ct. 1804, 60 L. Ed. 2d 323 (1979) and Hawaiʻi appellate courts (In re Doe, 102 Hawaiʻi 528, 78 P.3d 341 (App. 2003)) have held that civil commitment proceedings subject individuals to a "significant deprivation of liberty" which requires due process protections. Arbitrarily extending the period of imminent dangerousness to forty-five to ninety days without any objective justification other than to ease the burden on the State to establish imminency is directly contrary to the principles espoused by the courts. There has been no showing that broadening the definition by increasing the number

of days from forty-five days to ninety days will fulfill the intent of the statute to protect communities and provide necessary treatment to individuals posing a danger to themselves or others. Rather, this proposed legislation would increase the potential of a person, guilty of no crime, having their liberty taken away to be housed in a locked mental facility against their will.

2. Authorizing involuntary treatment of individuals subject to emergency hospitalization for an unspecified amount of time

H.B. No. 310 HD1 also allows individuals who are subject to emergency hospitalization to be "involuntarily treated" until a psychiatrist or advanced practice registered nurse ("APRN") "determines that the patient has regained decisional capacity." The underlying purpose of this legislation is to provide an expeditious means of treating individuals who are subject to emergency hospitalization and forcibly medicating them with the use of long-term injectable psychotropics without proper judicial review and in violation of the individual's significant due process rights.

At the outset, the term "decisional capacity" is problematic and likely unconstitutional as violative of due process and equal protection. The term is entirely subjective, not defined by the statute, and its interpretation left solely to the discretion of the psychiatrist or APRN.

Further, allowing the involuntary administration of medication (i.e., "treatment") without affording the individual due process violates the Hawai'i and United States Constitutions. The Hawai'i Supreme Court in State v. Kotis, 91 Hawai'i 319, 984 P.2d 78 (1999), citing the U.S. Supreme Court's decision in Riggins v. Nevada, 504 U.S. 127, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992), recognized that the forcible administration of antipsychotic drugs constitutes a "substantial" intrusion on an individual's bodily integrity and liberty. The Hawai'i Supreme Court and the U.S. Supreme Court both concluded that the following specific findings must be made before an individual (an incarcerated person in Kotis) may be involuntarily medicated with antipsychotic drugs:

(1) the defendant actually poses a danger of physical harm to himself or others;
(2) treatment with antipsychotic medication is medically appropriate; and
(3) considering less intrusive alternatives, the treatment is essential to forestall the danger posed by the defendant.

This is the same standard that is currently utilized by the DAG when filing involuntary medication petitions on persons who are involuntarily committed. ***HB No. 310 would bypass the constitutional protections established by the U.S. and Hawai‘i supreme courts and allow a psychiatrist or APRN to involuntarily medicate an individual for an unspecified period of time until the psychiatrist or APRN makes a subjective decision that the individual has regained the undefined "decisional capacity."*** A statute which acts in disregard of constitutional protections to allow the involuntary administration of medication for an unspecified time without objective criteria or court intervention would be found unconstitutional by the courts. The current procedure utilized by the DAG of filing petitions for involuntary civil commitment and involuntary medication can achieve the same result as H.B. No. 310 HD1 without sacrificing the significant constitutional rights of individuals.

Thank you for the opportunity to comment on this measure.

HB-310-HD-1
Submitted on: 2/15/2021 9:17:43 AM
Testimony for JHA on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lynne Unemori	Individual	Support	No

Comments:

Committee on Judiciary and Hawaiian Affairs

Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice Chair

TESTIMONY ON HB310, HD1 RELATING TO HEALTH

I am writing in SUPPORT of HB310, HD1. A major contributor to systemic homelessness in our community is the prevalence of severe mental illness, often compounded by substance abuse. It prevents many on the street from comprehending and taking advantage of treatments and services that could help them get on a path to recovery, safer living conditions and ultimately, a better life. This bill would make important changes to allow treatment for those who are mentally unable to make rational decisions about treatment. Enacting these changes can help break the cycle of sending them back on the street untreated, likely ensuring continued homelessness, harm to themselves and potentially others, and possible prison.

HB310, HD1 thoughtfully contains specifications, including the credentials of the health care professionals who would be allowed to determine that someone is lacking "decisional capacity," so that compassionate, potentially life-saving care can be provided while still respecting civil liberties. For added protection, language could be added to specify the amount of time treatment under this situation would be allowed.

Please support this bill so these tools are available to help those who currently are unable able to help themselves.

Lynne Unemori
Community citizen and Institute for Human Services board member

TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF HB310
To the House Committee on Judiciary & Hawaiian Affairs

For Hearing on February 16, 2021, at 2:00pm in Conference Room 325

I strongly support HB310, to assist our most vulnerable residents who are severely mentally ill or severely impaired due to substance abuse.

While I write as an individual, I have served as President of Institute for Human Services, the Hawaii State Bar Association and Hawaii Women Lawyers, and have spent thousands of volunteer hours helping Hawaii find better ways to address our homelessness crisis, civil rights and our legal system.

HB310 will increase the likelihood that persons suffering from severe mental illness or substance abuse will receive timely and appropriate care and treatment. They often lack decisional capability and fail to receive the treatments needed that can stabilize their psychiatric conditions to help bring them to lucidity. We have miracles of modern medicine that can treat even the most severe mental illnesses, but these treatments require either actual or implied consent processes so that treatment may be rendered. This bill is appropriately limited to those with mental illness or substance abuse who are imminently dangerous to self or others, and in need of care or treatment. This is often life-saving treatment, that enables the person to become more highly functioning and to restore communication and bridges with family and community. We owe it to these individuals to provide them life-saving treatment and help restore their lucidity when they lack their own decision-making authority.

Over 100 of our homeless residents are dying on our streets each year, at an average age of only 54. Deaths of homeless people continue to climb on Oahu | Honolulu Star-Advertiser In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street. These dangers are most vivid when a person suffering from severe mental illness or substance abuse no longer has decisional capacity for life-saving medical intervention and self-preservation. Abandoning these individuals to their “freedom” to live on the streets while severely disabled is a death sentence for many of them. And yet, they are someone’s son or daughter, parent or loved one. They deserve the same caring and curative treatment as would be offered to those with other life-threatening medical conditions.

This bill strikes an appropriate balance by allowing a short duration of involuntary treatment for these incapacitated persons, to help stabilize them and allow them to regain their decisional capacity. In so doing, we can help avoid the very real dangers of irreversible disability and death that these severely ill persons face if they are left on their own on the streets.

Respectfully submitted, Ellen Godbey Carson

Honolulu, Hawaii February 15, 2021

HB-310-HD-1
Submitted on: 2/15/2021 1:16:23 PM
Testimony for JHA on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Guzman	Individual	Support	No

Comments:

We have so many cases in our Wai'anae community who are mentally ill of all sorts running around the community endangering themselves and others, damaging property. They get arrested and released back to the streets, it's a revolving door how do the incabable speak up for themselves and seek help they can't agencies need to be able to step in! Fully support this bill.

WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021

ON THE FOLLOWING MEASURE:
H.B. NO. 310, H.D. 1, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 16, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Ian T. Tsuda,
Deputy Attorney General, at (808) 693-7081)

Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purposes of this bill are to (1) amend the definition of "imminently dangerous to self or others" to extend the timeframe for when a person is likely to become dangerous from 45 days to 90 days under section 334-1, Hawaii Revised Statutes (HRS), and (2) amend section 334-59, HRS, to permit the involuntary treatment of a patient with long-term injectable psychotropics if the patient is diagnosed with a serious mental illness or severe substance use disorder and found to lack decisional capacity, as well as require that such patients be assessed to determine whether a guardian or surrogate is needed to make health care decisions for the patient. The Department appreciates the inclusion in this measure of its previous recommendations relating to assessments for a guardian or surrogate but remains concerned about the provision authorizing involuntary treatment of a patient due to a lack of decisional capacity, even if diagnosed with a serious mental illness or severe substance abuse disorder.

In order to involuntarily treat a patient, the Hawai'i Supreme Court in *State v. Kotis*, 91 Hawai'i 319, 334, 984 P.2d 78, 93 (1999), held that there must exist facts demonstrating that (1) an individual actually poses a danger to self or others, (2) treatment with medication is medically appropriate and in the individual's medical

interest, and (3) considering less intrusive alternatives, the treatment is necessary to forestall the danger posed by the individual. In this regard, the existing provisions in section 334-59, HRS, already permit authorized medical professionals to provide necessary treatment to individuals during emergency examination and hospitalization consistent with this holding. Subsection (a)(3) permits treatment to ensure the safe transportation of individuals to a licensed psychiatric facility or emergency hospitalization and subsection (b) permits treatment on an individual that has been delivered for emergency examination and treatment to a psychiatric facility or behavioral crisis center. Since the provision permitting involuntary treatment with long-term injectable psychotropics requires only a lack of decisional capacity and diagnosis of severe mental illness or severe substance use abuse, it does not satisfy the legal standard for involuntary medication and will not withstand legal challenge. For these reasons, the Department recommends that the new provisions added to section 334-9(d) by section 3 on page 3, line 17, through page 4, line 10, be deleted.

In addition, to "increase the likelihood" that patients will receive "timely and appropriate care and treatment," the word "shall" in section 334-59(d) should remain unchanged. As currently written, authorized medical professionals conducting emergency examinations that have reason to believe that a patient is mentally ill or suffering from substance abuse, is imminently dangerous to self or others, and is in need of care or treatment are required to direct the patient for emergency hospitalization at a hospital or psychiatric facility. The use of the word "shall" ensures that these medical professionals treat such individuals on an emergency basis when the criteria for emergency hospitalization is present. To effectuate the purpose of the bill, the Department recommends that the proposed amendment from "shall" to "may" in section 3 on page 3, line 1, be removed.

Finally, to be consistent with the amendment to the definition of "imminently dangerous to self and others" in section 334-1, HRS, which extends the timeframe in which a person will become dangerous to self or others from 45 days to 90 days, the Department recommends this change also be made to the definition of "imminently

dangerous to self and others" in section 334-161(b), which applies to orders for involuntary treatment. Thus, section 334-161(b), HRS, would be amended as follows:

> For purposes of this section, "imminently dangerous to self or others" means that, without intervention, the person will likely become dangerous to self or dangerous to others within the next [~~forty-five~~] ninety days.

The Department respectfully requests that the Committee consider the recommended amendments.

Thank you for the opportunity to testify.

ACLU Hawai'i

Committees:	Committee on Judiciary & Hawaiian Affairs
Hearing Date/Time:	Tuesday, February 16, 2021, 2:00 p.m.
Place:	Via videoconference
Re:	*Testimony of the ACLU of Hawai'i in Opposition to H.B. 310, H.D. 1, Relating to Health*

Dear Chair Nakashima, Vice Chair Matayoshi, and members of the Committee on Judiciary & Hawaiian Affairs:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in opposition to** H.B. 310, H.D. 1, which amends the definition "imminently dangerous to self or others" and grants a treating psychiatrist or advanced practice registered nurse (APRN) the sole discretion to determine that a person lacks "decisional capacity" for purposes of medicating them against their will.

The ACLU of Hawai'i understands the importance of ensuring that people struggling with severe illness receive the medical treatment that they need. Involuntary hospitalization and forced injection of psychotropic medications, however, constitute serious deprivations of liberty that 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.

The bill's current language erodes the requirement that a person be "imminently dangerous to self or others" by defining the term as meaning "that, without intervention, the person will likely become dangerous to self or dangerous to others within the next ninety days." This change *doubles* the period of time qualifying as "imminent" under Hawai'i law. This vague language is antithetical to common usage of the word "imminent" and impermissibly expands the qualifications for involuntary commitment and treatment from those who actually are imminently dangerous, to those who are likely to become dangerous at some point during a future three-month period.

There exists a significant liberty interest in avoiding the unwanted administration of psychotropic medication,[1] and the process for determining "decisional capacity" created by this bill infringes on that liberty interest. The provision of page 3, lines 17-21 and page 4, lines 1-10 allows a psychiatrist or APRN to unilaterally decide that a person lacks "decisional capacity" and to forcibly medicate them with psychotropic drugs for an indefinite period of time.

[1] *See*, *Washington v. Harper*, 494 U.S. 210, 221, 110 S. Ct. 1028, 1036–37, 108 L. Ed. 2d 178 (1990).

The bill does not require periodic review of whether the medication is still necessary, whether the person is still imminently dangerous to self or others, or whether the medication is still the least restrictive option. There appears to be no trigger for a hearing—administrative or judicial—as to whether the individual lacks "decisional capacity," in violation of an individual's right to Due Process under the Fourteenth Amendment of the United States Constitution.[2] The language of H.B. 310, H.D. 1 involves no impartial decisionmaker in the determination of decisional capacity, as the sole decisionmaker is the psychiatrist or nurse who is treating the patient.[3] Rather, the bill was amended in H.D. 1 to allow the same treating psychiatrist or APRN to decide whether a surrogate or guardian is needed to make health care decisions for the patient. Finally, there seems to be no language ensuring that the decision of the treating psychiatrist or APRN will not trump the individual's right to be heard, which "must be granted at a meaningful time and in a meaningful manner."[4]

The Legislature must ensure that any procedures for involuntary treatment comply with Due Process requirements of the state and federal constitutions. For this reason and those discussed above, the ACLU of Hawai‘i urges the Committee to defer this measure. Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai‘i

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i 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 Hawai‘i has been serving Hawai‘i for over 50 years.

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[2] *Harper*, at 1043, stating "[a[State's attempt to set a high standard for determining when involuntary medication with antipsychotic drugs is permitted cannot withstand challenge if there are no procedural safeguards to ensure the prisoner's interests are taken into account."
[3] In *Harper*, the Court considered the impartiality of the decisionmaker that ordered involuntary treatment, deciding that as "[n]one of the hearing committee members may be involved in the inmate's current treatment or diagnosis," this requirement was met to the Court's satisfaction.
[4] *Armstrong v. Manzo,* 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965).

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluHawai‘i.org
www.acluhawaii.org

HB-310-HD-1
Submitted on: 2/15/2021 2:56:41 PM
Testimony for JHA on 2/16/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goodman	Individual	Support	No

Comments:

Thank you for the opportunituy to testify in strong support of HB310. Obviously, untreated mental illness and substance addiction is a huge factor driving unsheltered homelessness. The average life span of these individuals is about 30 years less than the general population. The cost to society is also astounding.

To protect this bill from constitutional challenges, it needs to have a "due process" component, where affected persons have an opportunity to challenge their status in an adversarial hearing. I suggest you have the Department of the Attorney General draft something. Aloha.

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony COMMENTING on H.B. 310 H.D. 1
RELATING TO HEALTH

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date: 2/16/2021 Hearing Time: 2:00 p.m.

Department Position: The Department of Health ("Department") respectfully offers comments and a proposed H.D. 2.

Department Testimony: The subject matter of this measure intersects with the scope of the Department's Behavioral Health Administration (BHA) whose statutory mandate is to assure a comprehensive statewide behavioral health care system by leveraging and coordinating public, private and community resources. Through the BHA, the Department is committed to carrying out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and person-centered.

The Department is committed to addressing the needs of individuals who live with behavioral health issues, and are in need of services when experiencing a crisis and there is an imminent risk of danger to self or others, including those who lack decision making capacity. This commitment includes developing and implementing a crisis continuum of care that includes a statewide Mental Health Emergency Worker (MHEW) program, crisis stabilization services, emergency examination, coordinating emergency admissions, and, where appropriate, pursuing involuntary commitment.

This measure revisits the timeframe for which a person can be determined as imminently dangerous from 45 days to 90 days and attempts to address the involuntary

treatment of a patient who is determined to be imminently dangerous. The issue of the timeframe was discussed at length during previous sessions and within the context of the Involuntary Hospitalization Task Force, and it appeared that most stakeholders believed that the timeframe identified in statute was generally less salient than the process by which the initial and longer term response and treatment were managed.

The Department believes that the timeliness of response discussed in Section 1 is not the issue; Rather, that the mechanisms allowing for appropriate disposition and treatment after a person is appropriately assessed and treated in the emergency room or in a hospital represents the crux of need in the continuum of care for the individuals this measure seeks to support.

Over the last year and a half, and despite the advent and challenges of the COVID-19 pandemic, we put significant effort into addressing this gap. In collaboration with the Mental Health Task Force, the working group of Act 90 and Act 263, Session Laws of Hawaii 2019, and specifically with the MH-1 work group, recommendations include, but are not limited to:

1. Developing a coordinated entry system for mental health and substance abuse services.
2. Implementing "sub-acute stabilization beds" designed to provide a safe place where individuals who are "not ill enough" to be psychiatrically admitted but who are not stable enough to be successful in other less intense community placements may be admitted to.
3. Developing a crisis diversion center at the Hawaii State Hospital that will evolve into a secure diversion center for the individuals this measure seeks to support.
4. Expanding the use of Intensive Case Management services that provide rapid response and engagement with persons who may have been discharged from the emergency department but need continued support and placement into short-term stabilization beds.

We are proud of the efforts and work that has been done in a short period of time by the Department and its community partners and believe that together, we have demonstrated "proof of concept" for these efforts through, for example, the Temporary Quarantine and Isolation Center (TQIC) in Iwilei for individuals identified as homeless and mentally ill who either were exposed to someone who tested positive for COVID-19 with no residence to quarantine or who themselves were confirmed as having testing positive for COVID-19 with no residence to safely isolate.

The evaluation of this community team effort shows that not only was this TQIC design an integral piece of successfully supporting individuals through their COVID-19 exposure, but also that the positive outcomes realized for some of our most chronically homeless and mentally ill citizens demonstrates a need to continue to resource these efforts.

In regards to involuntary treatment, the Department feels strongly that we need to continue to dialogue the concept that an individual who is severely psychotic, whether through mental illness, substance abuse, or both, can be in a state of "unconsciousness" similar to that of an individual who is unconscious because of a physical cause. The ability to render immediate treatment and aid to those who live with one or more of these behavioral health issues without their explicit consent, such as with cardiopulmonary resuscitation (CPR), is important to us. We continue to strive for a balance with individuals suffering from acute serious mental illness (SMI) where they can be treated during a time where they are, for all intents and purposes "unconscious", but still assure that their right to self-determination will be honored.

We do not believe that this measure, as written, adequately strikes that balance. However, we do believe that requiring an assessment to determine whether a surrogate or guardian is needed to make appropriate health care decisions for a person when there is a lack of decisional capacity supports the balance.

We remain committed to working with stakeholders to refine the current statute including continuing collaboration with state agency and community partners through the Mental Health Task Force.

We humbly ask the legislature to consider the programmatic and policy efforts that have been undertaken in the last year that collectively provide a foundation for continued active response to the most vulnerable individuals in our state.

For reference, the definition of an MH-1 is generally understood to mean a MHEW authorized involuntary transport, pursuant to section 334-59(a)(1), of a person in crisis by either law enforcement and/or emergency medical services personnel to receive an emergency examination and possible emergency hospitalization.

For context and clarification, we enclose a detailed outline of the processes for involuntary commitment that are currently in place.

Offered Amendments: Please see attached for a proposed H.D. 2.

Thank you for the opportunity to testify on this measure.

Fiscal Implications: Undetermined.

EXAMINATION AND TREATMENT FORMS

FORM No. 070927	APPLICATION FOR EMERGENCY EXAMINATION AND TREATMENT. (Replaces MH-2-App1ication for Emergency Examination' Treatment)
MH-1	EMERGENCY EXAMINATION: APPLICATION BY POLICE OFFICER. PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-2-a	ORDER AUTHORIZING EMERGENCY EXAMINATION AND TREATMENT.
MH-4	EMERGENCY EXAMINATION/HOSPITALIZATION: CERTIFICATE OF PHYSICIAN/PSYCHOLOGIST FOR ADMISSION/TRANSPORTATION TO A PSYCHIATRIC FACILITY PURSUANT TO HRS CHAPTER 334-59, AS AMENDED.
MH-4-a	NONCONSENSUAL ADMISSION: STATEMENT OF RIGHTS EMERGENCY EXAMINATION AND/OR HOSPITALIZATION PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-5	(CAMHD) APPLICATION FOR VOLUNTARY ADMISSION OF AN ADULT OR A MINOR UNDER AGE FIFTEEN (15) TO A PSYCHIATRIC FACILITY PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-5-a	(CAMHD) APPLICATION FOR VOLUNTARY ADMISSION OF A MINOR AGED FIFTEEN (15) THROUGH SEVENTEEN (17) YEARS TO A PSYCHIATRIC FACILITY PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-5-b	VOLUNTARY HOSPITALIZATION: NOTICE OF RIGHT TO RELEASE AND PROCEDURE TO APPLY FOR DISCHARGE PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-6	PETITION FOR INVOLUNTARY HOSPITALIZATION (Family Court)
MH-6-a	NONCONSENSUAL ADMISSION: STATEMENT OF RIGHTS INVOLUNTARY HOSPITALIZATION PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-6-b	(CAMHD) ORDER APPOINTING COUNSEL (Family Court)
MH-6-c	CERTIFICATE OF PHYSICIAN/PSYCHOLOGIST FOR INVOLUNTARY HOSPITALIZATION.

MH-6-d	CERTIFICATE OF ADMINISTRATOR
MH-6-e	NOTICE OF VOLUNTARY ADMISSION TO A PSYCHIATRIC FACILITY THEREBY CANCELLING HEARING ON PETITION FOR INVOLUNTARY HOSPITALIZATION
MH-6-f	NOTICE OF HEARING ON PETITION FOR INVOLUNTARY HOSPITALIZATION.
MH-6-g	NOTICE OF HEARING ON PETITION FOR INVOLUNTARY HOSPITALIZATION.
MH-6-h	RETURN OF SERVICE.
MH-6-i	FINDING AND HOSPITALIZATION ORDER OF INVOLUNTARY
MH-6-j	STATEMENT OF MAILING.
MH-6-k	NOTICE OF INTENT TO DISCHARGE.
MH-6-l	NOTICE OF OBJECTION TO INTENT TO DISCHARGE AND CERTIFICATION.
MH-6-m	ORDER OF DISCHARGE.
MH-6-n	NOTICE OF DISCHARGE.
MH-6-o	SUBPOENA DUCES TECUM: RETURN TO SERVICE.
MH-6-p	RE-PETITION FOR INVOLUNTARY HOSPITALIZATION: NOTICE OF HEARING ON RE-PETITION FOR INVOLUNTARY HOSPITALIZATION.
MH-6-q	CERTIFICATE OF SERVICE.
MH-7	APPLICATION TO TRANSFER PATIENT BETWEEN PSYCHIATRIC FACILITIES PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-8	NOTIFICATION OF TRANSFER OF PATIENT BETWEEN PSYCHIATRIC FACILITIES PURSUANT TO HRS CHAPTER 334, AS AMENDED.
MH-9	APPLICATION FOR TRANSFER OF RESIDENT OF A CORRECTIONAL FACILITY TO HAWAII STATE HOSPITAL: CERTIFICATE OF PSYCHIATRIST/PSYCHOLOGIST.

Summary of MH Law Forms

Authorization of transport for emergency examination initiated by law enforcement officer

MH-1

Form completed by a police officer after consultation with the Mental Health Emergency Worker (MHEW) leading to authorization of transport of a person in crisis to receive an emergency examination.

Authorization of transport for emergency examination - initiated by clinician/other

MH-2 (verbal request for ex-parte order)

A licensed physician, APRN, psychologist, attorney, member of the clergy, health or social service professional or any state or county employee in the course of his employment may apply to the court for an ex parte' (one-sided) order directing that a police officer or other suitable individual take a person into custody and deliver him/her to the nearest facility designated by the director for emergency examination.

MH-2a (order authorizing emergency examination and treatment)

Court order authorizing examination and treatment (after the petition is granted by the court).

Emergency Hospitalization

MH-4 (Certificate of Physician/Psychologist for Emergency Hospitalization)

Filled out by physician, psychologist, or APRN after a patient is brought to the ER (commonly via an MH-1 or MH-2 process) certifying justification for an up to a 48-hour emergency hospitalization.

Voluntary Admission

MH-5

Voluntary admission form signed upon admission by adult patients who agree to willingly be in the hospital. If an individual is assessed to be unable to consent to admission due to diminished decision-making capacity, he/she will be treated as an involuntary patient.

MH-5a

Voluntary admission form for minors done at the hospital. Family Court sends an officer to sign the patient in once the patient is in the hospital.

Involuntary Commitment

MH6

Petition for involuntary hospitalization.

MH6c (certificate of physician/psychologist for involuntary hospitalization)

Is the form that the physician or psychologist completes typically after the 48-hour time period expires on the emergency hospitalization (MH-4) and the patient continues to show signs of dangerousness to self or others and is in need of treatment for mental disorder.

A hearing must be held no later than 10 days from the date that the petition is filed. During the period prior to the hearing, the patient may only be involuntarily treated for emergencies. Lawyers for the hospitals are from the Department of the Attorney General and for the patients are commonly from the Public Defender's office. Maximum confinement pursuant to the first commitment order is 90 days; a 90 day and then a 180 day extension can be granted following subsequent court hearings.

Background:

MH numbers were generated by AMHD in development of forms.

Numbers are from order of development.

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.B. NO. 310 PROPOSED H.D. 2

A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The purpose of this Act is to increase the likelihood that persons suffering from severe mental illness or substance abuse will receive timely and appropriate care and treatment, whether when brought to an emergency department for evaluation, hospitalized in a psychiatric facility under an emergency hospitalization or involuntary commitment order, or while being considered for assisted community treatment, by requiring the assessment of certain patients subject to emergency hospitalization to determine if a surrogate or guardian needs to be appointed to make appropriate health care decisions for the patient.

SECTION 2. Section 334-59, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Emergency hospitalization. If the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization

who performs the emergency examination has reason to believe that the patient is:

(1) Mentally ill or suffering from substance abuse;

(2) Imminently dangerous to self or others; and

(3) In need of care or treatment, or both;

the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall direct that the patient be hospitalized on an emergency basis or cause the patient to be transferred to another psychiatric facility for emergency hospitalization, or both. The patient shall have the right immediately upon admission to telephone the patient's guardian or a family member including a reciprocal beneficiary, or an adult friend and an attorney. If the patient declines to exercise that right, the staff of the facility shall inform the adult patient of the right to waive notification to the family, including a reciprocal beneficiary, and shall make reasonable efforts to ensure that the patient's guardian or family, including a reciprocal beneficiary, is notified of the emergency admission but the patient's family, including a reciprocal beneficiary, need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with an attorney in private.

A patient who is seen in an emergency department or hospitalized on an emergency basis pursuant to this subsection, diagnosed with a serious mental illness or severe substance use disorder pursuant to subsection (b), and found to be lacking decisional capacity by a psychiatrist, or by an advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization, shall be assessed to determine whether a surrogate under section 327E-5 or a guardian under article V of chapter 560 is needed to make appropriate health care decisions for the patient."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2060.

Report Title:
Mental Illness; Substance Abuse; Emergency Hospitalization; Assessment

Description:
Requires assessment of patients who are subject to emergency hospitalization, diagnosed with a serious mental illness or severe substance use disorder, and found to be lacking decisional capacity to determine if a surrogate or guardian needs to be appointed to make appropriate health care decisions for the patient. Effective 7/1/2060.
(HD2)