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

ON THE FOLLOWING MEASURE:
H.B. NO. 310, H.D. 2, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, March 2, 2021 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308, Via Videoconference

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

Chair Luke 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), (2) amend section 334-59, HRS, to permit the involuntary treatment of a patient for up to 30 days, which includes the use of 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, and (3) remove the definition of "imminently dangerous to self or others" under section 334-161(b), HRS, in relation to proceedings for Assisted Community Treatment. The Department 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), has 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.

The provision permitting involuntary treatment with long-term injectable psychotropics does not satisfy the legal requirements for involuntary medication under *State v. Kotis* as it requires only a lack of decisional capacity and diagnosis of severe mental illness or severe substance use abuse and will not withstand legal challenge. The addition of wording providing that a patient in these circumstances can be involuntarily treated for up to 30 days does not cure this defect. For these reasons, the Department recommends that the new provisions added to section 334-59(d) by section 3 on page 3, line 17, through page 4, line 11, 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 are 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.

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

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
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Testimony COMMENTING on H.B. 310 H.D. 2
RELATING TO HEALTH

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: 3/2/2021 Hearing Time: 11:00 a.m.

Department Position: The Department of Health ("Department") respectfully offers comments and a proposed H.D. 3.

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 grounds 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 tested 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 Mental Health Emergency Worker (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. 3.

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 H.D. 2 PROPOSED H.D. 3

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)

DEPARTMENT OF THE PROSECUTING ATTORNEY

CITY AND COUNTY OF HONOLULU

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STEVEN S. ALM
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THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

March 2, 2021

RE: H.B. 310, H.D. 2; RELATING TO HEALTH.

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony, **supporting the intent** of H.B. 310, H.D. 2, with concerns and suggested amendments.

The purpose of H.B. 310, H.D. 2, is to provide more timely and effective mental health treatment and support for those who need it. Specifically, this bill would: expand the definition of "imminently dangerous to self or others," from a period of 45 days to 90 days; make emergency hospitalization discretionary even if all criteria are met; and allow involuntary treatment of someone subject to emergency hospitalization, who "lacks decisional capacity," which would also trigger an assessment for possible appointment of a surrogate or guardian.

While the Department's primary function is to fairly and effectively prosecute criminal offenses, our overarching concern is public safety and welfare. Thus, we appreciate the intent to slightly expand the definition of "imminently dangerous to self or others," and require treatment of those who are emergency hospitalized, even if they are not of sound mind to make that decision for themselves. However, the Department is deeply concerned that someone who meets the criteria for emergency hospitalization—to the extent they are:

(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;"

(see HRS §334-59(d); also H.B. 310, H.D. 2, at page 2, lines 15-18; emphasis added)—could potentially **not** be hospitalized, if this bill were to pass as currently written (H.B. 310, H.D. 2,

page 3, line 1). If the Committee chooses to pass this bill, we respectfully **ask that the proposed amendments on page 3, line 1, be deleted**.

The Department takes no position on other parts of this bill. We do note, however, that it seems somewhat incongruous that someone who was simply "seen in an emergency department," could then be "involuntarily treated for up to 30 days, including the use of long-term injectable pscyhotropics" (H.B. 310, H.D. 2, page 3, line 17, through page 4, line 11). If the Committee elects to retain this portion of the bill—and we defer to the Department of the Attorney General's assessment, regarding constitutional concerns—you may wish to delete the words "seen in any emergency department or," from page 3, line 18.

For people who suffer from serious mental illness or substance abuse, who are also "imminently dangerous to self or others," the Department strongly believes that providing swift and appropriate mental health treatment—while safeguarding their constitutional rights—is both the most humane and safest approach for that person and for everyone around them.

Based on all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of H.B. 345, H.D. 2, with the noted concerns and suggested amendments. Thank you for the opportunity to testify on this matter.

HB310 HD1 Involuntary Commitment for Substance Abuse and Mental Illness

COMMITTEE ON FINANCE:

- Rep Sylvia Luke, Chair; Rep. Ty Cullen, Vice Chair
- Tuesday, Mar. 2, 2021: 11:00: Videoconference

Hawaii Substance Abuse Coalition Supports HB310 HD1:

ALOHA 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.

Several states now include <u>chronic</u> substance abuse with mental health disorders.

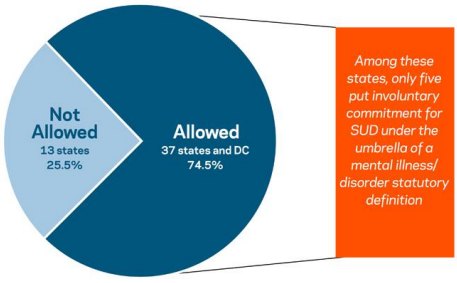

Figure 1. Legal Provision for Involuntary Commitment for Substance Use Disorders among U.S. states and DC (N=51)[8]

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 <u>effective</u> 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.

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

- 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.
- 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 current time for concern for individuals is insufficient

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.[2] 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.

[2] 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.

HB-310-HD-2
Submitted on: 2/28/2021 1:15:57 PM
Testimony for FIN on 3/2/2021 11:00:00 AM

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 some 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 is 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 has been improved over the original bill but still raises several questions. We understand 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 for purposes of this chapter, unless the intent is for it to have the same definition as found elsewhere in the Hawaii Revised Statutes. The form of involuntary treatment is said to include the use of longer lasting psychotropic medication, but it is not clear what else it might include or exclude. Significantly, there is no trigger for a judicial proceeding, and this raises legal and constitutional concerns.

Regarding the assessment for 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, and we do remain willing and committed to being part of a constructive discussion.

Hawai'i Psychological Association

For a Healthy Hawai'i

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COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J. K. Cullen, Vice Chair

DATE: Tuesday, March 2, 2021- 11:00AM - VIDEO CONFERENCE - Room 308

Testimony in Support with Comments on HB310 SD2 RELATING TO HEALTH Suggesting Amendments

The Hawai'i Psychological Association (HPA) supports and provides these comments on HB310 SD2, which expands the definition of "imminently dangerous to self or others" in Chapter 334 of Hawaii Revised Statutes pertaining to mental health, mental illness, drug addiction, and alcoholism; and provides greater autonomy and authority for qualified mental health professionals to determine if a surrogate or guardian needs to be appointed to make appropriate health care decisions for the patient.

As a foundational matter, HPA believes it is ultimately more humane to involuntarily medicate those who need treatment, rather than continue their cycle of homelessness, victimization, jail and prison.

HPA believes that psychologists are fully qualified and equipped to determine if a surrogate or guardian needs to be appointed to make appropriate health care decisions for a mentally ill patient; and proposes the bill be amended on page 4, line 16:

> "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, **psychologist**, or by an advanced practice registered nurse having 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."

HPA also notes that by extending the time period of imminent dangerousness from 45 to 90 days, as is done in Section 2 of the bill, it is easier to medicate or hospitalize those who become dangerous after they stop medication. This is significant because oftentimes it takes many months for a person to decompensate and become dangerous after their medication loses their effectiveness.

Accordingly, this bill is a step forward in achieving safer, more effective treatment and humane conditions for the mentally ill. However, it does not address the lack of civil commitment psychiatric capacity at community hospitals. Thus, to fully effectuate the spirit of this bill, institutional capacity must be addressed. Homelessness and criminalization of the mentally ill is highly correlated with deinstitutionalization, a lack of psychiatric hospital beds, *and* overly strict civil commitment criteria.

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Alex Lichton, Ph.D.

Alex Lichton, Ph.D.
Chair, HPA Legislative Action Committee

THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
Members, House Committee on Finance

From: Sondra Leiggi-Brandon, Director, Behavioral Health Services, The Queen's Medical Center
Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: March 2, 2021

Re: Comments Re: HB310, HD2: Relating to Health

The Queen's Health Systems (Queen's) is a nonprofit 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, and more than 1,500 affiliated physicians and providers 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 provide comments with concerns on HB310 HD2, Relating to Health. The measure seeks to revised the definition of "imminently dangerous to self or others" and amend HRS334-59 (d) relating to emergency hospitalization by creating a provision in the statute that allows for the involuntary treatment of individuals who have been hospitalized pursuant to this section with a serious mental illness or severe "substance use disorder" and found to lack decisional capacity for a duration determined by the clinician. We commend the introducers of this measure and share their commitment to addressing the needs of those suffering from serious mental health disorders in our community. However, we have concerns with this bill in its current form and offer the following comments.

The bill seeks to amend the definition of "imminently dangerous to self or others" by stating that a person will likely become dangerous to self or others within the next ninety days' vs forty-five days. While we appreciate the previous Committee's amendments to the bill, we are still concerned about the extended period of hospitalization set forth since it would be difficult to determine if an individual would meet that definition. Further, severe substance use disorder patients are not better treated in a hospital but rather a residential substance treatment program and with good wraparound community services. Which is why there is an urgent need to increase community resources to provide such services for individuals with substance use disorder and for those who are in crisis but may not rise to the level of requiring inpatient care.

We note that over half of the MH-1 transports to The Queen's Medical Center, Punchbowl campus, do not meet the criteria for involuntary hospitalization and could be treated at alternative sites to the Emergency Department. Queen's continues to work with the Department of Health on the statewide Mental Health Emergency Worker (MHEW) program to strengthen the continuum of care for patients by effectively screen individuals in crisis and triage them to receiving sites and services as needed.

Additionally, we would request clarification on specific care settings that the measure could apply to. It is possible that the bill could have unintended consequences on medical decisions related to involuntary treatment beyond emergency situations and impact patients on medical floors within our hospitals who lack decisional capacity and have a severe substance use disorder. Finally, we would note that the proposed measure does not provide for an expedited order to treat process, but rather allows the clinician full decision making ability regarding involuntary treatment.

Queen's appreciates the intent of the measure to facilitate greater access to treatment. Thank you for the opportunity to provide testimony expressing our concerns with HB310, HD2.

HB-310-HD-2
Submitted on: 2/26/2021 9:05:58 PM
Testimony for FIN on 3/2/2021 11:00:00 AM

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

Comments:

Aloha Finance Committee,

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.

Thanks for your consideration,

Thaddeus Pham (he/him)

TO THE HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021
COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
DATE: Tuesday, March 2, 2021
TIME: 11:00 a.m.
PLACE: VIA VIDEOCONFERENCE
Conference Room 308
State Capitol
415 South Beretania Street

POSITON: <u>STRONG SUPPORT HB130HD2</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 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

The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

State House Committee on Finance
Hearing on Tuesday, 3/2/2021 11:00 a.m.
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

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

Re: Testimony in Support of HB310 HD2, 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 HB310, HD2.** 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.

This bill can finally curtail the high costs associated with repeated medical and judicial interventions with homeless individuals who simply need effective treatment for their conditions. Without this bill, our police, social services, and emergency rooms will continue to incur high costs in shuttling homeless individuals through a system that fails to provide them effective means to regain their functionality and make productive decisions for themselves.

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.
Finally, amendment made to the original bill in HD 2 also adds the mandate for people who are being brought into the emergency room on emergency evaluation orders to be assessed for whether they have lost decisional capacity and may have need for a surrogate decision maker or a guardian. This would go a long way to helping to support the team interested or assigned to treat this individual to pursue court ordered treatment through petition for guardianship or assisted community treatment.

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.

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, HD2 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 and likely saving the State hundreds of thousands of dollars in the long run..

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-2
Submitted on: 3/1/2021 7:32:36 AM
Testimony for FIN on 3/2/2021 11:00:00 AM

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

Comments:

Committee on Finance

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

TESTIMONY ON HB310, HD2 RELATING TO HEALTH

I am writing in SUPPORT of HB310, HD2. A major contributor to systemic homelessness in our community is the prevalence of severe mental illness, coupled with or compounded by substance abuse. It hampers the ability of so many on the street to comprehend and take 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 to 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, HD2 thoughtfully contains specifications, including a time limit for these provisions and 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.

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, HD2
State House Committee on Finance
Hearing on Tuesday, 3/2/2021 11:00 a.m.

I write in support of HB310, HD2, which will assist in providing life-saving treatment for our most vulnerable homeless residents.

While I write as an individual, I have served as President and director of Institute for Human Services, President of the Hawaii State Bar Association, and member of the Church of the Crossroads Peace and Justice Mission Team, spending many years helping Hawaii find better systemic ways to address its dual crises of homelessness and lack of affordable housing.

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. This bill addresses those most at risk of dying on our streets, people who have severe mental illness or substance abuse and no longer have 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.

This bill can finally curtail the high costs associated with repeated medical and judicial interventions with our most seriously ill homeless residents, who most need more effective treatment options for their conditions. This bill will allow use of long-term psychotropic medication and other treatment to help those most in need. Without this bill, our police, social services, and emergency rooms will continue to incur high costs in shuttling homeless individuals through a system that fails to provide them effective means to regain their functionality and make productive decisions for themselves.

This bill strikes an appropriate balance of legal rights, 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.

Please pass HB310, HD2.

HB-310-HD-2
Submitted on: 3/1/2021 11:10:54 AM
Testimony for FIN on 3/2/2021 11:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Oppose	No

Comments:

Oppose