



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 0310, RELATING TO HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

**DATE:** Thursday, February 4, 2021                      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Via Videoconference

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

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Chair Yamane and Members of the Committee:

The Department of the Attorney General 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 if the patient is diagnosed with a serious mental illness or severe substance use disorder and found to lack decisional capacity by authorized medical professionals. While there are no concerns with point (1) above, point (2) authorizing involuntary treatment of a patient due to a lack of decisional capacity requires revisions to be consistent with existing law.

Section 334-59, HRS, currently permits authorized medical professionals to provide necessary treatment to individuals during emergency examination and hospitalization. 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 who has been delivered for emergency examination and treatment to a psychiatric facility or behavioral crisis center. These provisions are consistent with the Hawai'i Supreme Court's decision in *State v. Kotis*, 91 Hawai'i 319, 334, 984 P.2d 78, 93 (1999), which requires findings 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. As such, the existing provisions in section 334-59 ensure medical professionals can provide necessary and emergency treatment to individuals consistent with *State v. Kotis*.

In situations where the primary barrier to securing medical treatment is an individual's lack of decisional capacity, even if due to serious mental illness or a severe substance abuse disorder, this bill on page 3, lines 15-20, will amend section 334-59(d) to allow involuntary treatment until the patient regains decisional capacity. However, section 327E-5, HRS, provides medical professionals with a mechanism to obtain permission for treatment from a surrogate when there exists no other person(s) with authority to consent to treatment. This process requires notification and consultation with and among certain interested persons. If a surrogate is identified, that person can act without judicial approval and make most medical decisions based upon the patient's known wishes or, if unknown or unclear, in the patient's best interest.

Similarly, article V of chapter 560, HRS, provides a mechanism for the appointment of a guardian of an incapacitated person to make decisions on behalf of an individual. Section 560-5-312, HRS, provides for the appointment of an emergency guardian in circumstances where delay caused by the normal process would result in substantial harm to the individual.

To be consistent with existing law, we recommend section 3 on page 3, lines 8-20, be amended as follows:

A patient who is seen in an emergency department or hospitalized on an emergency basis pursuant to this subsection, is diagnosed with a serious mental illness or severe substance disorder, and is found to be lacking decisional capacity by a psychiatrist, 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.

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

STATE OF HAWAI‘I  
**OFFICE OF THE PUBLIC DEFENDER**

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

February 4, 2021

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

Chair Yamane, Vice Chair Tam, and Members of the Committee:

We respectfully oppose passage of H.B. No. 310, which would greatly broaden the term of “imminently dangerous to self and others.” It also proposes to increase the maximum period of emergency hospitalization from 48 to 72 hours.

**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 Hawai‘i appellate courts (In re Doe, 102 Hawai‘i 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 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.” It appears that the underlying purpose of this legislation is to provide an expeditious means of forcibly medicating individuals who are subject to emergency hospitalization. However, the legislation does so at the expense of the significant due process rights of the individuals.

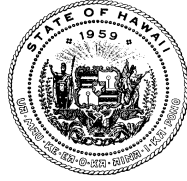
At the outset, the term “decisional capacity” is problematic and likely unconstitutional as violative of due process and equal protection. The term is entirely subjective, not defined by the statute, and its interpretation left solely to the discretion of the psychiatrist or APRN. Further, allowing the involuntary administration of medication (i.e., “treatment”) without affording the individual due process violates Hawai‘i case law. 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."* It is almost certain that 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 HB 310 without sacrificing the significant constitutional rights of individuals.

Thank you for the opportunity to comment on H.B. No. 310.



LATE

STATE OF HAWAII  
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**Testimony COMMENTING on H.B. 310  
RELATING TO HEALTH**

REPRESENTATIVE RYAN I. YAMANE, CHAIR  
HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, AND HOMELESSNESS

Hearing Date: 2/4/2021

Hearing Time: 9:00 a.m.

1 **Department Position:** The Department of Health (“Department”) respectfully offers  
2 comments.

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

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

16 This bill revisits the timeframe for which a person can be determined as imminently  
17 dangerous from 45 days to 90 days and attempts to address the involuntary treatment of a

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

6 We believe that the timeliness of response at a hospital discussed in Section 1 is not the  
7 issue. Rather that the mechanisms that allow for appropriate disposition and treatment after a  
8 person is appropriately assessed and treated in the emergency room represents the crux of  
9 need in the continuum of care for patients and citizens that this measure seeks to support.

10 The DOH has put significant effort into addressing that gap over the last year and a half  
11 despite the advent and challenges of the COVID-19 pandemic and based on recommendations  
12 of the Mental Health Task Force which include but are not limited to:

- 13 1. Development of a coordinated entry system for mental health and substance  
14 abuse services.
- 15 2. Implementation of “sub-acute stabilization beds” that are designed to provide a  
16 safe place where individuals who are “not ill enough” to be psychiatrically  
17 admitted but who are not stable enough to be successful in other less intense  
18 community placements.
- 19 3. Development of a crisis diversion center at the Hawaii State Hospital that will  
20 continue to be developed as a secure diversion center for many of the  
21 individuals this measure seeks to support.
- 22 4. Expansion of the use of Intensive Case Management services that seek to  
23 provide rapid response and engagement with persons who may have been  
24 discharged from the emergency department but need continued support and  
25 placement into short term stabilization beds.



1           We are proud of the efforts and work that has been done in a short period of time by  
2 both the DOH and its community partners and believe that together we have demonstrated  
3 “proof of concept” for these efforts through example of the temporary quarantine and isolation  
4 center in Iwilei for homeless and mentally ill individuals at risk for COVID-19. The evaluation of  
5 that effort showed that not only was it successful in supporting individuals in relationship to  
6 COVID-19 but that the positive outcomes realized for some of our most chronically homeless  
7 and mentally ill citizens demonstrates a need to continue to resource these efforts.

8           As to the issue of involuntary treatment, the DOH feels strongly that we need to  
9 continue to dialogue the concept that an individual who is severely psychotic whether through  
10 mental illness, substance abuse or both, can be in a state of “unconsciousness” similar to that  
11 of an individual who is unconscious because of a physical cause. The need to be able to render  
12 immediate treatment and aid in those cases without explicit consent of the individual such as  
13 with CPR, for people with mental illness is important to us. We continue to strive for a balance  
14 with individuals suffering from acute mental illness where they can be treated during a time  
15 where they are, for all intents and purposes “unconscious”, but still assure that their right to  
16 self-determination will be honored.

17           We do not believe that this measure as written strikes that balance. However, we  
18 remain committed to working with stakeholders to refine the current statute. Further, we  
19 humbly ask the legislature to consider the programmatic and policy effort that have been  
20 undertaken in the last year that provide a foundation for continued active response for our  
21 most vulnerable individuals.

22           The Department continues to collaborate with state agency and community partners  
23 through the Mental Health Task Force, the working group of Act 90 and Act 263, Session Laws  
24 of Hawaii 2019, and specifically with the MH-1 work group. For reference, the definition of an  
25 MH-1 is generally understood to mean a mental health emergency worker authorized  
26 involuntary transport, pursuant to section 334-59(a)(1), of a person in crisis by either law

1 enforcement and/or emergency medical services personnel to receive an emergency  
2 examination and possible emergency hospitalization.

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

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

1		EXAMINATION AND TREATMENT FORMS
2	FORM No. 070927	APPLICATION FOR EMERGENCY EXAMINATION AND TREATMENT.
3		(Replaces MH-2-App1ication for Emergency Examination'
4		Treatment)
5	MH-1	EMERGENCY EXAMINATION: APPLICATION BY POLICE OFFICER.
6		PURSUANT TO HRS CHAPTER 334, AS AMENDED.
7	MH-2-a	ORDER AUTHORIZING EMERGENCY EXAMINATION AND
8		TREATMENT.
9	MH-4	EMERGENCY EXAMINATION/HOSPITALIZATION: CERTIFICATE OF
10		PHYSICIAN/PSYCHOLOGIST FOR ADMISSION/TRANSPORTATION
11		TO A PSYCHIATRIC FACILITY PURSUANT TO HRS CHAPTER 334-59,
12		AS AMENDED.
13	MH-4-a	NONCONSENSUAL ADMISSION: STATEMENT OF RIGHTS
14		EMERGENCY EXAMINATION AND/OR HOSPITALIZATION
15		PURSUANT TO HRS CHAPTER 334, AS AMENDED.
16	MH-5	(CAMHD) APPLICATION FOR VOLUNTARY ADMISSION OF AN
17		ADULT OR A MINOR UNDER AGE FIFTEEN (15) TO A PSYCHIATRIC
18		FACILITY PURSUANT TO HRS CHAPTER 334, AS AMENDED.
19	MH-5-a	(CAMHD) APPLICATION FOR VOLUNTARY ADMISSION OF A MINOR
20		AGED FIFTEEN (15) THROUGH SEVENTEEN (17) YEARS TO A
21		PSYCHIATRIC FACILITY PURSUANT TO HRS CHAPTER 334, AS
22		AMENDED.
23	MH-5-b	VOLUNTARY HOSPITALIZATION: NOTICE OF RIGHT TO RELEASE
24		AND PROCEDURE TO APPLY FOR DISCHARGE PURSUANT TO HRS
25		CHAPTER 334, AS AMENDED.
26	MH-6	PETITION FOR INVOLUNTARY HOSPITALIZATION (Family Court)
27	MH-6-a	NONCONSENSUAL ADMISSION: STATEMENT OF RIGHTS
28		INVOLUNTARY HOSPITALIZATION PURSUANT TO HRS CHAPTER
29		334, AS AMENDED.
30	MH-6-b	(CAMHD) ORDER APPOINTING COUNSEL (Family Court)
31	MH-6-c	CERTIFICATE OF PHYSICIAN/PSYCHOLOGIST FOR INVOLUNTARY
32		HOSPITALIZATION.

1	MH-6-d	CERTIFICATE OF ADMINISTRATOR
2	MH-6-e	NOTICE OF VOLUNTARY ADMISSION TO A PSYCHIATRIC FACILITY
3		THEREBY CANCELLING HEARING ON PETITION FOR INVOLUNTARY
4		HOSPITALIZATION
5	MH-6-f	NOTICE OF HEARING ON PETITION FOR INVOLUNTARY
6		HOSPITALIZATION.
7	MH-6-g	NOTICE OF HEARING ON PETITION FOR INVOLUNTARY
8		HOSPITALIZATION.
9	MH-6-h	RETURN OF SERVICE.
10	MH-6-i	FINDING AND HOSPITALIZATION ORDER OF INVOLUNTARY
11	MH-6-j	STATEMENT OF MAILING.
12	MH-6-k	NOTICE OF INTENT TO DISCHARGE.
13	MH-6-l	NOTICE OF OBJECTION TO INTENT TO DISCHARGE AND
14		CERTIFICATION.
15	MH-6-m	ORDER OF DISCHARGE.
16	MH-6-n	NOTICE OF DISCHARGE.
17	MH-6-o	SUBPOENA DUCES TECUM: RETURN TO SERVICE.
18	MH-6-p	RE-PETITION FOR INVOLUNTARY HOSPITALIZATION: NOTICE OF
19		HEARING ON RE-PETITION FOR INVOLUNTARY HOSPITALIZATION.
20	MH-6-q	CERTIFICATE OF SERVICE.
21	MH-7	APPLICATION TO TRANSFER PATIENT BETWEEN PSYCHIATRIC
22		FACILITIES PURSUANT TO HRS CHAPTER 334, AS AMENDED.
23	MH-8	NOTIFICATION OF TRANSFER OF PATIENT BETWEEN PSYCHIATRIC
24		FACILITIES PURSUANT TO HRS CHAPTER 334, AS AMENDED.
25	MH-9	APPLICATION FOR TRANSFER OF RESIDENT OF A CORRECTIONAL
26		FACILITY TO HAWAII STATE HOSPITAL: CERTIFICATE OF
27		PSYCHIATRIST/PSYCHOLOGIST.
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## 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

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

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

5     Voluntary Admission

6     **MH-5**

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

10    **MH-5a**

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

13    Involuntary Commitment

14    **MH6**

15    Petition for involuntary hospitalization.

16    **MH6c (certificate of physician/psychologist for involuntary hospitalization)**

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

4 A hearing must be held no later than 10 days from the date that the petition is filed. During the  
5 period prior to the hearing, the patient may only be involuntarily treated for emergencies.

6 Lawyers for the hospitals are from the Department of the Attorney General and for the patients  
7 are commonly from the Public Defender's office. Maximum confinement pursuant to the first  
8 commitment order is 90 days; a 90 day and then a 180 day extension can be granted following  
9 subsequent court hearings.

10 **Background:**

11 MH numbers were generated by AMHD in development of forms.

12 Numbers are from order of development.

**HB-310**

Submitted on: 2/3/2021 7:29:02 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anton Krucky	City and County of Honolulu	Support	No

Comments:

My name is Anton Krucky and I am the Executive Director of the Mayor's Office of Housing in the City and County of Honolulu. Our Office and the City and County of Honolulu supports HB310. As we know, the homeless situation that exists in Honolulu is difficult to manage. The portion of homeless individuals that are dealing with mental issues many times cannot see the world in a way that would allow them to make sound and healthy decisions. With the medications that are available to us today, we can help them get a better view, so that they can help themselves. Prior to taking the medication, they may refuse without the full capability to do so. To give the capability to the make that determination to a psychiatrist, or an advanced practice registered nurse, would be a healing thing to do. It is better for the individual and the homeless situation that they find themselves.



**HB-310**

Submitted on: 2/2/2021 5:02:33 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

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

Comments:

While we are not specifically opposed to Section 2 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 seems 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 very loose and open ended and undefined and therefore arguably illegal or unconstitutional. “Decisional capacity” is no defined. Nor is the form of involuntary treatment specified. 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.

If the intent is to facilitate the use of longer lasting drugs, we have to believe that there is a cleaner, better way to state that. If the Committee were inclined to seek stakeholder collaboration to re-draft this, we would certainly be willing to participate.



## HB310 Involuntary Commitment for Substance Abuse and Mental Illness COMMITTEE ON HEALTH, HUMAN SERVICES & HOMELESSNESS:

- Rep Ryan Yamane, Chair; Rep. Adrian Tam, Vice Chair
- Thursday, Feb. 4, 2021: 9:00 am: Videoconference

### Hawaii Substance Abuse Coalition Supports HB310:

*GOOD MORNING CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of over 30 substance use disorder and co-occurring mental health disorder treatment and prevention agencies.*

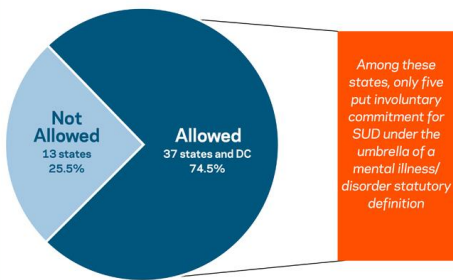


Figure 1. Legal Provision for Involuntary Commitment for Substance Use Disorders among U.S. states and DC (N=51)<sup>1</sup>

**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.**<sup>1</sup>

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

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

**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.<sup>2</sup>

### **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.<sup>3</sup> 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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<sup>2</sup> National Institute on Drug Abuse. (2012). Principles of drug addiction treatment: A research-based guide. Rockville, MD: National Institutes of Health.

<sup>3</sup> 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.



*Dedicated to safe, responsible, humane and effective drug policies since 1993*

## **TESTIMONY IN OPPOSITION TO HB 310**

TO: Chair Yamane, Vice Chair Tam & Committee Members

FROM: Nikos Leverenz  
DPFH Board President

DATE: February 4, 2021 (9:00 AM)

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With the understanding that those suffering from severe mental illness could require a heightened level of attention and engagement called for in this bill, Drug Policy Forum of Hawaii is strongly opposed to the coerced treatment of persons with substance use disorder.

To the extent that any person who injects drugs could be diagnosed with a level of severity sufficient to make them eligible for detention and coerced treatment, this bill is haphazardly overbroad.

Even with a diagnosis, coerced treatment for those with substance use disorder raises significant ethical concerns. Among these concerns are (1) avoidance of the infliction of harm on the person being treated, (2) informed consent, (3) the prohibition of inhuman and degrading treatment or punishment, (4) the right to freedom from arbitrary detention, and (5) the right to freedom of movement. See, e.g., International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, and Convention Against Torture.

DPFH strongly supports legislative efforts to make voluntary treatment opportunities more widely for those with substance use disorder and those who are experiencing problems with substance use. As noted by the American Public Health Association (APHA), "Substance misuse treatment is too often unavailable or unaffordable for the people who want it." APHA calls upon policymakers to "support a full reorientation toward a health approach to drug use." It recommends "ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction strategies, and expanding (and removing barriers to) treatment and harm reduction services." See, "[Policy Statement: Defining and Implementing a Public Health Response to Drug Use and Misuse.](#)"

APHA's statement also weighs against compulsory treatment: "Coerced treatment for any health condition, especially for mere drug possession, raises serious ethical concerns [and] runs counter to accepted health principles."

A punitive approach to drug misuse and substance use disorder, including the perpetuation of deep structural stigma through criminalization, incarceration, and protracted periods of correctional supervision, has been the preferred policy response in this nation. The results have been less than positive, to say the least.

The ongoing COVID-19 pandemic counsels a more rigorous public health approach to public health problems, including those related to substance use and other behavioral health issues.

Thank you for the opportunity to testify on this measure.



## THE QUEEN'S HEALTH SYSTEMS

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To: The Honorable Ryan I. Yamane, Chair  
The Honorable Adrian K. Tam, Vice Chair  
Members, House Committee on Health, Human Services, & Homelessness

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: February 4, 2021

Re: Comments Re: HB310 Relating to Health

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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 on HB310, 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 and amendment.

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 dangerous to others within the next ninety days' vs forty-five days. We are concerned about the extended period of time since it would be difficult to determine if an individual would met that definition. We would also note that there is currently no diagnosis of "serious mental illness" in statute or definition in the current version of the bill. Further, patients are not generally hospitalized with a severe substance use disorder; they have another diagnosis and then may have a severe substance use disorder. 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.

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

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 site to the Emergency Department. Therefore, we are requesting that the verbiage "in a hospital" under section 3, page 2 line 5 of the bill be removed.

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 testify and provide comments.



**To: House Committee on Health, Human Services, & Homelessness**

**Hearing Date/Time: Thursday, February 4, 2021, 9:00 a.m.**

**Re: Testimony in Opposition to HB310**

**From: Heather Lusk, Hawaii Health and Harm Reduction Center**

Dear Chair Yamane, Vice Chair Tam, and members of the Committee on Health, Human Services, & Homelessness:

The Hawaii Health & Harm Reduction Center (HHHRC) strongly supports increased access to behavioral health services but has strong concerns about potential unintended consequences of HB310 – especially as it applies to involuntary substance abuse treatment which would be expanded under this bill which is not been proven to be effective.

The American Public Health Association (APHA) recommends “ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction strategies and expanding (and removing barriers) to treatment and harm reduction services” and goes on to specifically state “coerced treatment for any health condition, especially for mere drug possession, raises serious ethical and runs counter to accepted health principles” (APHA, 2013)

HHHRC is also concerned about the unilateral decision-making of one provider at a hospital implementing involuntary treatment as outlined in this measure. The current Assisted Community Treatment law has several checks and balances which ensures that more than one healthcare provider is involved and that a history of engagement is necessary prior to determining that one is “imminently dangerous to self or others” whereas HB310 allows on provider to determine decisional capacity which may be a violation of an individual’s right to Due Process.

HHHRC’s mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities. We have a long history of working with people struggling with mental health and substance use and believe implementing evidence-based practices is essential and there is little evidence to support the changes described in HB310.

Thank you for the opportunity to testify and if HB310 moves forward, we respectfully ask to be included in discussions about language changes.



Hawai'i

Committees: House Committee on Health, Human Services, & Homelessness  
Hearing Date/Time: Thursday, February 4, 2021, 9:00 a.m.  
Place: Via videoconference  
Re: Testimony of the ACLU of Hawai'i in Opposition to H.B. 310, Relating to Health

Dear Chair Yamane, Vice Chair Tam, and members of the Committee on Health, Human Services, & Homelessness:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in opposition** to H.B. 310, 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,<sup>1</sup> and the process for determining "decisional capacity" created by this bill infringes on that liberty interest. The provision of page 3, lines 8-20 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. 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

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

Chair Yamane and Members of the Committee  
February 4, 2021  
Page 2 of 2

Amendment of the United States Constitution.<sup>2</sup> The language of H.B. 310 involves no impartial decisionmaker in the determination of decisional capacity, as the sole decisionmaker is the psychiatrist or nurse who is treating the patient.<sup>3</sup> 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."<sup>4</sup>

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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<sup>2</sup> *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."

<sup>3</sup> 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.

<sup>4</sup> *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  
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# Hawai'i Psychological Association

*For a Healthy Hawai'i*

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Honolulu, HI 96808

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## COMMITTEE ON HEALTH HUMAN SERVICES & HOMELESSNESS

Rep. Ryan I. Yamane,  
Chair Rep. Adrian K. Tam, Vice Chair

DATE: Thursday, February 4, 2021- 9:00AM - VIA VIDEO CONFERENCE - Room 329

### Testimony in Support and Comments on HB310 RELATING TO HEALTH

**The Hawai'i Psychological Association (HPA) supports HB310, 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 administer involuntary treatment and hospitalization.**

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

By extending the time period of imminent dangerousness from 45 to 90 days, it is easier to 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.

However, while this bill purports to achieve safer, more effective treatment and humane conditions for the mentally ill, it does not address the lack of civil commitment psychiatric capacity at community hospitals (i.e.- Queen's, Castle, Maui Memorial, Hilo Medical Center, Kona Community Hospital, Wilcox, and Mahelona). Without more civil commitment beds, our hospitals risk becoming overcrowded – which is particularly problematic during a pandemic. 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.

HB310, if passed as currently drafted, also raises questions about psychologists' scope of practice. While this bill does not permit psychologists to do civil commitments, HPA presumes this is because psychologists do not typically work in emergency rooms. However, if a psychologist happens to be in the emergency room, will they be precluded from civilly committing a patient if otherwise authorized to do so? Will such a change in the law set a precedent to further exclude psychologists from doing civil commitments in locations outside emergency rooms?

Finally, HPA notes that changing “shall” to “may” on page 2, line 13 will give practitioners more discretion *not* to hospitalize patients. This will be a departure from the directive currently provided in statute and may result in fewer hospitalizations.

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

Sincerely,

Alex Lichton, Ph.D.

Chair, HPA Legislative Action Committee

LATE

**HB-310**

Submitted on: 2/3/2021 12:33:55 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alex Lichten	HI Psych Assn.	Support	No

Comments:

The Hawaii Psychological Association has already submitted testimony in support of HB310. I wish to testify via Zoom. Sincerely, Alex Lichten, Ph.D., Legislative Chair



THE INSTITUTE FOR HUMAN SERVICES, INC.  
*Ending the Cycle of Homelessness*

2/2/2021

State House Health and Human Services Committee  
Hearing on Thursday, 2/4/2021 9:00 a.m.  
Representative Ryan Yamane, Chair  
Representative Adrian Tam, Vice Chair

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

Re: HB310 Emergency hospitalization and 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 remain stably housed. **IHS stands in full support of HB310.** The changes put forth by this bill on emergency hospitalization is 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.

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 core problem of diminished executive function: cognition, memory and organized thought and judgment. Instead, when the patient refuses treatment, they are released back into the community until the next time they are caught behaving in dangerous ways to 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 they do not choose it to restore that individual's cognitive abilities and live a healthier life overall.

It also permits the use of injectable long acting antipsychotic medications, instead of limited short acting oral or injectable medication, with someone who may have a very difficult time





# THE INSTITUTE FOR HUMAN SERVICES, INC.

*Ending the Cycle of Homelessness*

remembering to take their medications on a daily basis, as is the case with someone who is especially homeless. Injectable, long-acting antipsychotic medications can last 30 -90 days, administered after it is determined that the individual is not allergic to the medication.

The temporary period of 90 days for legal permission to treat over objection affords a sufficient time for the person to benefit significantly from the medication so as to regain a greater capacity to make decisions or for a petition for guardianship or assisted community treatment order to be submitted to the court if it should be required to continue treatment. This 90-day period of time is only a fraction of the time that a successful petition for assisted community order would authorize for treatment over objection.

The portion of disabled homeless persons for whom this kind of treatment is significant, but not the majority. Medication, in and of itself, is not the only treatment that persons suffering severe mental illness or co-occurring substance use disorders need to recover.

Psychosocial rehabilitation, housing and a supportive community is critical to helping an individual recover their purpose in life, their abilities to contribute and to enjoy the liberties afforded all of us in this state. The ability of a person to participate and engage in treatment is severely limited if the individual is not stabilized with antipsychotic medication 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.

Please pass HB310 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 assertively outreach across our island.

Sincerely,

Connie Mitchell



**HB-310**

Submitted on: 2/2/2021 11:57:22 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patricio Battani	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.



**HB-310**

Submitted on: 2/2/2021 12:25:40 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wallace Engberg	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.

**HB-310**

Submitted on: 2/2/2021 12:39:06 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Emily Willis	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.

**HB-310**

Submitted on: 2/2/2021 12:54:33 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
steven urrutia	Individual	Oppose	No

Comments:

Hello, my name is *Steven*, I am a special education teacher at **Wai'anae High School** & I strongly **oppose** HB310 because of its potential impact on our disabled, LGBTQIA+, and marginalized community members. First, I'd like to make clear that the term of this bill "**found** to be lacking decisional capacity" is **too subjective** to the staffs judgement, and their **findings** can be limited to their identifies as majorily english-speaking, able-bodied people: If a person who meets this criteria also speaks english as a second language and cannot communicate as they're accustomed to, they will be **found** to lack decisional capacity. People with disabilities will be **marginalized** by their ability to express themselves in a way that **staff deem fit**. Although this bill is well-intended, we must also condemn this bill for its future implications.. under the clear evidence of pharmaceutical industires exploitation on poor people of color, we cannot rely on forced medication because we cannot ensure that medication which has not yet been created can be safe enough for such a risky decision. 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.

**HB-310**

Submitted on: 2/2/2021 1:01:25 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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.

**HB-310**

Submitted on: 2/2/2021 2:58:44 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Miriam Guevara	Individual	Oppose	No

Comments:

I strongly oppose HB310, because the potential impact on our LGBTQIA+, disabled, and marginalized community members is far too great. The values and preferences of the patients are not being respected, even though the fundamental human right to equal recognition before the law applies to everyone - even those with mental disorders. There is no proof that forced treatment does more good than harm, the possibility that it would do good is slim to none. Multiple studies exist that show the potential harm this would cause. A registered study of 2,429 suicides showed that the closer the contact with psychiatric staff – which involves forced treatment – the worse the outcome. Once again, I strongly oppose this bill and urge you to deny its existence as well.

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: STRONG SUPPORT**

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 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

**HB-310**

Submitted on: 2/2/2021 9:16:08 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marya Grambs	Individual	Support	No

Comments:

I have volunteered for several years at an emergency homeless shelter and have seen firsthand how often people are discharged from the E.R. without being treated, causing them cycle repeatedly between the hospital, the street, and shelter. These are individuals whose mental illness deprives them of the ability to make sound decisions about treatment. One of the symptoms of a psychosis like schizophrenia is that the person actually **does not know** they are sick, so of course they don't want medication. If, however, while they are in this incapacitated state, they could be given a long-acting antipsychotic medication, they could begin to stabilize and, as they get better, understand the need to maintain treatment and benefit from community services such as case management and housing placement.

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 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.

Think for a minute of Alzheimers: if you found a person with Alzheimers dementia wandering confusedly outside, 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. People suffering from this brain disease deserve no less help than we would afford people with Alzheimers. Enabling our hospitals to provide long-acting anti-psychotic medication to people who have been determined to be a danger to self/others/unable to self-preserve makes sense, and will save lives. I urge you to support this bill.



**HB-310**

Submitted on: 2/2/2021 11:12:15 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christy MacPherson	Individual	Support	No

Comments:

As a former mental health and substance abuse provider, I strongly support this bill. This is a way to show compassion and care for those who cannot care for themselves.

**HB-310**

Submitted on: 2/2/2021 11:29:03 PM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lauren Taylor	Individual	Support	No

Comments:

I am a senior nursing student at the University of Hawaii at Manoa and will be graduating with my Bachelor of Science in Nursing (BSN) degree in May 2021. As a future nurse, I have a true passion to provide psychiatric mental health care to those individuals who desperately need it. For my senior capstone project, I have been working with IHS this semester and have seen at first hand the detrimental and absolutely devastating effects when an individual with a serious psychiatric mental illness and/or substance abuse disorder does not receive the quality care that they truly deserve and have a right too.

One main reason why I strongly support HB310 is that not only will it promote the mentally ill person's individual safety but it will also promote the general public's safety and sense of security. Granting health professionals the ability to authorize involuntary admission of a person with a serious mental illness and/or substance abuse disorder promotes stabilization of that individual through the consistent medication of the patient. HB310 also has the potential to ease the burden on the current emergency room admissions by expediting treatment of repeated MH1s. This then allows valuable emergency room resources to be made more available to persons with medical emergencies and helps facilitate more efficient and cost-effective utilization of hospital resources.

With HB310 enacted it will help promote the long-term care and treatment for persons who are mentally ill where it restores the individual to a greater state of self-determination. In addition to this, the benefits of HB310 will go beyond the medical/clinical side because mentally ill persons will thus become more receptive to relationships and cooperation to achieve housing. I truly believe that for the future of Hawaii's mental health patient population that there is no greater time than for now for HB310 to be passed. As a nursing student, it would be a privilege to know if HB310 was passed that the rights and needs of those individuals with serious mental illnesses were advocated for, respected, fought for, and treated with dignity. Thank you!

**HB-310**

Submitted on: 2/3/2021 8:05:17 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
LeeAnn Silva	Individual	Support	No

Comments:

I support this bill.

**HB-310**

Submitted on: 2/3/2021 8:09:20 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ray Ogai	Individual	Comments	No

Comments:

Aloha,

I understand and agree with purpose noted in section 1 as well as the definition noted in section 2. Substance use disorder (SUD) treatment would help a person who is in need for change. It should be noted that SUD treatment is not a one stop shop nor is there a cure for addiction/SUD.

Imminent danger should be and I am assuming it is being addressed with what is already in place...and I believe the goal/treatment for those in imminent danger is to assist the individual shift from that state to a less risk state of mind/condition. The next step would be determined after the shift takes place.

There are various modalities and services including diversion programs available on a volunteer basis that can assist with the shift and/or next step. IF it was determined that all voluntary resources, as determined by an licensed or certified substance use or mental health professional, were exhausted, then involuntary commitment may be appropriate.

Some folks in the criminal justice system are required to complete treatment, which I see positive outcomes from. These folks may not be in imminent danger but this may have prevented an individual from getting to that state. More focus on these types of interventions may be needed before commitment to involuntary SUD treatment.

Any outcomes of involuntary commitment cases in other cases would be helpful to determine if Hawaii could benefit from this.

Thank you,

-Ray O.

**HB-310**

Submitted on: 2/3/2021 8:31:23 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Shaku	Individual	Oppose	No

Comments:

1: I have concerns that this edit has the potential to infringe on civil liberties. I would be interested to see what measures are tested and viable to determine if a person is at risk for "immediate danger" within a timeline of 90 days.

2: The language around substance use disorder is troubling. The DSM V deliberately avoids the subjective analysis of "abuse" and favors substance use, allowing for a more clinical perspective than one laced with judgment and stigma. The current version of this bill uses outdated terminology "mentally ill or suffering from substance abuse". Now may be a good time to consider updating the language to be more clinically accurate. "Adversely impacted by a behavioral health condition" or something similar might better serve the bills intent.

LATE

**HB-310**

Submitted on: 2/3/2021 9:04:31 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Theresa E. Bueno	Individual	Support	No

Comments:

Please, consider helping the homeless who are unable to make thoughtful, healthy decisions for themselves and in so doing will help Hawaii as a whole community to go forward in creating a better society. By passing this bill, it may allow small but necessary steps to achieve this goal.

Thank you for reading this comment.

T. Bueno

LATE

TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF HB310  
To the House Committee on Health, Human Services & Homelessness

For Hearing on February 4, 2021, at 9:00am in Conference Room 329

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.

HB 310 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.

Respectfully submitted, Ellen Godbey Carson

Honolulu, Hawaii February 3, 2021

LATE

**HB-310**

Submitted on: 2/3/2021 11:58:16 AM

Testimony for HHH on 2/4/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Staley	Individual	Oppose	No

Comments:

I strongly oppose HB 310.

With the understanding that those suffering from severe mental illness could require a heightened level of attention and engagement called for in this bill, Drug Policy Forum of Hawaii is strongly opposed to the coerced treatment of persons with substance use disorder.

To the extent that any person who injects drugs could be diagnosed with a level of severity sufficient to make them eligible for detention and coerced treatment, this bill is haphazardly overbroad.

Even with a diagnosis, coerced treatment for those with substance use disorder raises significant ethical concerns. Among these concerns are (1) avoidance of the infliction of harm on the person being treated, (2) informed consent, (3) the prohibition of inhuman and degrading treatment or punishment, (4) the right to freedom from arbitrary detention, and (5) the right to freedom of movement. See, e.g., International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, and Convention Against Torture.



LATE

2/3/21

Aloha Representative Yamane and members of the Health, Human Services, & Homelessness Committee. My name is Brandt R. Kam, I currently reside in Makiki, and am a 2nd year Masters in Social Work student at the University of Hawai'i at Manoa.

I support HB 310 because I believe that by amending the current definition of "imminently dangerous to self or others" from 45 days to 90 days, it will increase the likelihood that persons suffering from severe mental illness or substance abuse will receive appropriate care and treatment. I also believe that by allowing treating psychiatrists and advanced practice registered nurses to involuntarily treat patients that they deem lack decisional capacity in a hospital setting will help those with severe mental illness and substance abuse.

Aside from being a graduate student in social work, I also work part time as a Crisis Line intake worker, and I come across countless situations where individuals with severe mental illness are admitted to psychiatric ERs, only to be discharged several hours later because the individual is no longer exhibiting symptoms, or the person sobered up. However, if this bill is allowed to pass through, it will allow psychiatrists and advanced practitioner nurses to involuntarily admit people with severe mental illness or substance abuse at the ER if they deem them unable to make coherent decisions, and conduct a thorough psychiatric evaluation with treatment options. I believe this will help reduce the recidivism rate of those with severe mental illness being admitted to ERs over and over again, with no proper treatment being given. Also by increasing the definition of one likely being "imminently dangerous to self or others" from 45 days to 90 days, it will allow psychiatric facilities to hold onto individuals for longer periods of time in order to ensure they receive the treatment they need. This is particularly beneficial for homeless people with severe mental illness or substance abuse, as the unsheltered circumstances can often exacerbate their illness.

I urge you to vote in favor of HB 310, as I believe this bill will have a positive impact for our Hawaii population that suffers from severe mental illness and substance abuse.

Mahalo for the opportunity to share my experiences and offer my opinions in support of this bill.

Sincerely,

Brandt R. Kam