



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on HB0035
RELATING TO MENTAL HEALTH

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date and Time: Thursday, January 31, 2019 at 9:30 a.m.

Room: 329

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** Thank you for the opportunity to provide comments on this measure.
3 HB0035 proposes to restore the categories of “gravely disabled” and “obviously ill” to the criteria
4 for involuntary hospitalization that were deleted by Act 221, Session Laws of Hawaii 2013 and
5 proposes to increase the maximum period of emergency hospitalization from 48 hours to 72
6 hours.

7 The Department of Health (DOH) supports addressing the needs of individuals who live
8 with mental illness and those who are chronically homeless including the provision of services
9 by mental health emergency workers, emergency examinations, emergency admissions, and, if
10 necessary, involuntary commitment.

11 For the Committee’s consideration, the DOH offers the following comments:

- 12 1. Regarding the insertion of the proposed definitions for “gravely disabled” and
13 “obviously ill” into Section 334-1, Hawaii Revised Statutes (HRS): These definitions
14 may not be consistent with Federal case law and a decision by the Hawaii Supreme
15 Court requiring a finding of imminent risk for involuntary hospitalization;
16 2. The current statutory definition of the term “dangerous to self” that applies to initiating
17 and conducting an emergency examination, emergency admission, and proceedings
18 for involuntary commitment already includes provisions for an individual that is,
19 “unable, without supervision and the assistance of others, to satisfy the need for

1 nourishment, essential medical care, shelter or self-protection” due to a mental
2 illness or related to suffering from substance abuse; and

3 3. The terms “gravely disabled” and “obviously ill” may potentially cause confusion and
4 inconsistent application if codified in statute.

5 The DOH does not offer a position or recommendation on the extension of the maximum
6 period of emergency hospitalization. Input of other stakeholders that have information about or
7 are involved in assessing and providing for emergency hospitalization may be germane to
8 considering this revision.

9 The DOH supports a strengthening of our mental health system especially the
10 community continuum of supports and services, through thoughtful revision of law, changed
11 policies, enhanced and expanded programs, and continued partnership with external
12 stakeholders.

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

14 **Offered Amendments:** None.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Health**

January 31, 2019

H.B. No. 35: RELATING TO MENTAL HEALTH

Chair Mizuno and Members of the Committee:

We respectfully oppose passage of H.B. No. 35 which would greatly broaden the categories of persons who are subject to emergency hospitalization against their will and involuntary hospitalization. It also proposes to increase the maximum period of emergency hospitalization from 48 to 72 hours.

Currently, the emergency hospitalization and involuntary hospitalization law requires the authorities to show that the subject of the hospitalization is “imminently dangerous to self or others.” H.B. No. 35 would dispense with that requirement and require only that the subject is either “gravely disabled” or “obviously ill.” The broad definition of these terms would allow for the immediate hospitalization of almost any person currently on our streets who is outwardly suffering from a mental illness.

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

H.B. No. 35 also increases the maximum time for emergency hospitalization from 48 to 72 hours. We oppose this change. This would allow a person to be held without a court hearing for 3 days and, in some cases, up to 5 or 6 days if a weekend or holiday occurs during the detention. This exceedingly long detention period based upon a police officer’s and mental health emergency worker’s judgment is unjustifiable.

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

Thank you for the opportunity to provide testimony in this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:
H.B. NO. 35, RELATING TO MENTAL HEALTH.

LATE

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Thursday, January 31, 2019 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

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

Chair Mizuno and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and offers comments with a suggested amendment that would fulfill the Legislature's intent and minimize constitutional challenges.

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

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

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

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

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

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

HB-35

Submitted on: 1/29/2019 5:40:41 PM

Testimony for HLT on 1/31/2019 9:30:00 AM

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

Comments:

We are not clear what effect this bill would have. While the term “gravely disabled” was repealed, we do note that the term “imminently dangerous” was expanded in the law to encompass a variety of factors and benchmarks and to provide for a 45 day time frame of reference. So, the idea that an individual cannot be treated involuntarily unless they are in immediate danger is no longer the case. For that reason we are not certain if the addition of these terms would have any significant impact. We think that the expanded definition of “imminently dangerous” may encompass the concept of “gravely disabled”. We would like to hear opinions from our colleagues in the mental health community.

We also note that we may be avoiding the more crucial question which is where would we actually treat these individuals. Currently there is no place for a person to be civilly committed. So, it may be a moot issue as to what legal standard is applicable if we have no facilities in the community to provide the services. We view that as potentially the more important question.

HB-35

Submitted on: 1/30/2019 10:47:09 AM

Testimony for HLT on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

HB-35

Submitted on: 1/30/2019 11:04:09 AM

Testimony for HLT on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike McGrath, MD	Individual	Support	No

Comments:

I am a practicing psychiatrist and addiction medicine physician practicing in Hawaii for the past 24 years. I have treated many thousands of persons suffering from serious behavioral health conditions that required involuntary hospitalization.

I support this bill because it addresses a clinical neurological disability that exists in many serious behavioral health disorders. The medical term is anosognosia. Essentially it is the lack of functioning in the parts of the brain that enable one to have insight into their well being and health. It is often accompanied by related neurological disabilities that interfere with one's ability to restrain inappropriate impulses or make rational judgments or plans.

This bill is an enlightened and compassionate view of the most vulnerable of our citizens that due to these neurological disabilities are unable to speak for themselves, care for their needs or avail themselves of the services our State has to offer.

This is an excellent proposal in a clinically-informed process to address related social problems such as homelessness and substance use disorders that tragically effect so many in Hawaii.

HB-35

Submitted on: 1/28/2019 9:37:03 PM

Testimony for HLT on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Individual	Support	No

Comments:

LATE

HB-35

Submitted on: 1/30/2019 9:11:28 PM
Testimony for HLT on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alysa Lavoie	Individual	Support	No

Comments:

From: Alysa Lavoie, community mental health case manager (20 years), Kailua Kona, HI

Date: Wednesday, January 30, 2019

Subject: Support for H.B. 35 Mental Illness; Involuntary Hospitalization; Criteria

I have 20 years of experience working as a case manager to individuals with severe and persistent mental health conditions in Kailua-Kona, Hawai'i. The current criteria for hospitalization need to be changed since they are too reactive and exclusionary. By making "risk of harm" the defining criterion for admission, we are saying that the community needs to wait until a person is violent or suicidal before that person will be involuntarily hospitalized. Also, I feel that it excludes a majority of individuals who would greatly benefit from hospitalization but are not presenting with aggression.

For many years I worked with an individual, "Mora," a middle-aged female who was homeless and suffering from debilitating, positive symptoms of schizophrenia. Her insight and judgment were poor. Over time, she began to subscribe to a delusion that "the company" was trying to poison her and steal her DNA. Mora refused my support and turned down the food I offered her. She was not violent or aggressive. She was not an "imminent" danger to herself or others. She did not meet the criteria for involuntary hospitalization. I could not help her, but merely sit back and watch her health slowly deteriorate.

Eventually, she developed a staph infection. I never thought that staph would make me happy, but hers did. Her infection provided me with the leverage to petition a judge for the emergency examination on the basis her communicable disease put the public at risk. It was a stretch, but it was a success, and she was hospitalized. Unfortunately, she was discharged 48 hours later with minimal improvement to her physical or mental health. Two days is an insufficient hospitalization period. A hospital is a place for medication stabilization, respite, and linkage to resources; none of these can be

accomplished in 48 hours. We need to increase the mandatory hold period to 72 hours or more.

When health professionals initiate the involuntary hospitalization process, we do it with a heavy heart as we struggle with the ethical dilemma it poses. The decision is not made lightly; it is the last resort for patients with poor insight but are in extreme need of treatment. Professionals will not change these practices because the law changes. However, I feel that the proposed changes increase the chance that the patients will benefit from the hospitalizations.

Please vote yes on HB 35.