

JAN 26 2022

A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The legislature finds that Hawai'i is one of
2 only four states that uses an imminently dangerous standard for
3 persons for whom an emergency mental health evaluation is
4 needed. Under the standard of imminent danger, unless there are
5 signs of immediate danger, usually evidenced by an overt act, a
6 person cannot be subject to the laws allowing transportation to
7 an emergency room or other psychiatric facility for emergency
8 examination. National review of the imminently dangerous
9 standard has found it to be ambiguous, subject to disparate
10 interpretations, and not required under United States Supreme
11 Court precedent.

12 The legislature further finds that in 2016, Hawai'i amended
13 its laws to clarify that "imminently dangerous" means that
14 "without intervention, the person will likely become dangerous
15 to self or dangerous to others within the next forty-five days".
16 Act 114, Session Laws of Hawaii 2016. The resulting effect of
17 this amendment is that persons who need an emergency mental



1 health examination will not be examined, or receive any
2 necessary emergency treatment, if they do not exhibit signs of
3 becoming dangerous in the ensuing nine weeks. It also keeps
4 Hawai'i law inconsistent with the vast majority of the country.
5 Removing "imminent" from the standard for emergency mental
6 health examinations will result in clearer guidance that is
7 based on whether there is reason to believe that the person is
8 "dangerous to self or others". The statutory definition of
9 "dangerous to self or others" alone provides a comprehensive
10 description of a person in need of emergency mental health
11 treatment, specifically that the person has recently:

12 "(1) Threatened or attempted suicide or serious bodily
13 harm; or

14 (2) Behaved in such a manner as to indicate that the
15 person is unable, without supervision and the
16 assistance of others, to satisfy the need for
17 nourishment, essential medical care, including
18 treatment for a mental illness, shelter or self-
19 protection, so that it is probable that death,
20 substantial bodily injury, or serious physical



1 debilitation or disease will result unless adequate
2 treatment is afforded."

3 The legislature additionally finds that since 2016,
4 California law has explicitly restricted application of the
5 concept of imminent harm when determining if the person should
6 be transported to an emergency room for emergency evaluation.
7 California law also requires consideration of historical
8 information about the person's mental illness.

9 The purpose of this Act is to amend the requirement for
10 emergency mental health examination to require reasonable belief
11 that the person is dangerous to self or others and for
12 historical information about the person's mental illness to be
13 considered.

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

16 "(a) Initiation of proceedings. An emergency admission
17 may be initiated as follows:

18 (1) If a law enforcement officer has reason to believe
19 that a person is [~~imminently~~] dangerous to self or
20 others, the officer shall call for assistance from the
21 mental health emergency workers designated by the



1 director. Upon determination by the mental health
2 emergency workers that the person is [~~imminently~~]
3 dangerous to self or others, the person shall be
4 transported by ambulance or other suitable means, to a
5 licensed psychiatric facility for further evaluation
6 and possible emergency hospitalization. The mental
7 health emergency workers shall consider all available
8 relevant information about the historical course of
9 the person's condition as to whether the person is a
10 danger to self or others. A law enforcement officer
11 may also take into custody and transport to any
12 facility designated by the director any person
13 threatening or attempting suicide. The officer shall
14 make application for the examination, observation, and
15 diagnosis of the person in custody. The application
16 shall state, or shall be accompanied by a statement
17 of, the circumstances under which the person was taken
18 into custody and the reasons therefor, which shall be
19 transmitted with the person to a physician, advanced
20 practice registered nurse, or psychologist at the
21 facility.



(2) Upon written or oral application of any licensed physician, advanced practice registered nurse, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe the person is mentally ill or suffering from substance abuse, is [imminently] dangerous to self or others and in need of care or treatment, or both, giving the findings upon which the conclusion is based. The order shall direct that a law enforcement officer or other suitable individual take the person into custody and deliver the person to a designated mental health program, if subject to an assisted community treatment order issued pursuant to part VIII of this chapter, or to the nearest facility designated by the director for emergency examination and treatment, or both. The ex parte order shall be made a part of the patient's clinical record. If the



1 application is oral, the person making the application
2 shall reduce the application to writing and shall
3 submit the same by noon of the next court day to the
4 judge who issued the oral ex parte order. The written
5 application shall be executed subject to the penalties
6 of perjury but need not be sworn to before a notary
7 public.

8 (3) Any licensed physician, advanced practice registered
9 nurse, physician assistant, or psychologist who has
10 examined a person and has reason to believe the person
11 is:

12 (A) Mentally ill or suffering from substance abuse;

13 (B) [~~Imminently dangerous~~] Dangerous to self or
14 others; and

15 (C) In need of care or treatment;

16 may direct transportation, by ambulance or other
17 suitable means, to a licensed psychiatric facility for
18 further evaluation and possible emergency
19 hospitalization. A licensed physician, an advanced
20 practice registered nurse, or physician assistant may
21 administer treatment as is medically necessary, for



1 the person's safe transportation. A licensed
2 psychologist may administer treatment as is
3 psychologically necessary."

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

6 SECTION 4. This Act shall take effect upon its approval.

7

INTRODUCED BY: _____

Kal Rhoads



S.B. NO. 3253

Report Title:

Mental Health; Mental Illness; Emergency Mental Health Examination

Description:

Removes the "imminent" requirement from the standard for emergency mental health examinations and requires mental health workers to consider a person's history of mental illness in determining whether the person requires an emergency mental health examination.

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