
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 PART I

2 SECTION 1. The purpose of this part is to require the
3 department of the attorney general to assist with the
4 preparation and filing of petitions for assisted community
5 treatment and with the presentation of the case, unless declined
6 by the petitioner.

7 SECTION 2. Section 334-121.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§334-121.5 Examination for assisted community treatment**
10 **indication.** A licensed psychiatrist or advanced practice
11 registered nurse with prescriptive authority and who holds an
12 accredited national certification in an advanced practice
13 registered nurse psychiatric specialization associated with the
14 licensed psychiatric facility where a person is located who was
15 committed to involuntary hospitalization, delivered for
16 emergency examination or emergency hospitalization, or
17 voluntarily admitted to inpatient treatment at a psychiatric



1 facility pursuant to part IV shall, before the person's
2 discharge, examine the person to determine whether an assisted
3 community treatment plan is indicated pursuant to this part. If
4 a plan is indicated, the psychiatrist or advanced practice
5 registered nurse shall prepare the certificate specified by
6 section 334-123 [~~and may request assistance from the department~~
7 ~~of the attorney general with the preparation and filing of a~~
8 ~~petition brought pursuant to section 334-123]~~. The department
9 of the attorney general shall assist with the preparation and
10 filing of any petition brought pursuant to section 334-123 and
11 with the presentation of the case at any related court
12 proceedings; provided that, if the petitioner is a private
13 provider or other private individual, the petitioner may decline
14 the assistance. The psychiatric facility may notify another
15 mental health program for assistance with the coordination of
16 care in the community for the person. Nothing in this section
17 shall delay the appropriate discharge of a person from the
18 psychiatric facility after the examination for assisted
19 community treatment indication has been completed."

20 SECTION 3. Section 334-123, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§334-123 Initiation of proceeding for assisted community**
2 **treatment.** (a) Any interested party may file a petition with
3 the family court alleging that another person meets the criteria
4 for assisted community treatment. The petition shall state:

- 5 (1) Each of the criteria under section 334-121 for
6 assisted community treatment;
- 7 (2) Petitioner's good faith belief that the subject of the
8 petition meets each of the criteria under section
9 334-121;
- 10 (3) Facts that support the petitioner's good faith belief
11 that the subject of the petition meets each of the
12 criteria under section 334-121; and
- 13 (4) That the subject of the petition is present within the
14 county where the petition is filed.

15 The hearing on the petition need not be limited to the
16 facts stated in the petition. The petition shall be executed
17 subject to the penalties of perjury but need not be sworn to
18 before a notary public.

19 (b) The department of the attorney general shall assist
20 with the preparation and filing of any petition brought pursuant
21 to this section and with the presentation of the case at any



1 related court proceedings; provided that, if the petitioner is a
2 private provider or other private individual, the petitioner may
3 decline the assistance.

4 ~~[(b)]~~ (c) The petition may be accompanied by a certificate
5 of a licensed psychiatrist or advanced practice registered nurse
6 with prescriptive authority and who holds an accredited national
7 certification in an advanced practice registered nurse
8 psychiatric specialization who has examined the subject of the
9 petition within twenty calendar days ~~[prior to]~~ before the
10 filing of the petition. For purposes of the petition, an
11 examination shall be considered valid so long as the licensed
12 psychiatrist or advanced practice registered nurse with
13 prescriptive authority and who holds an accredited national
14 certification in an advanced practice registered nurse
15 psychiatric specialization has obtained enough information from
16 the subject of the petition to reach a diagnosis of the subject
17 of the petition, and to express a professional opinion
18 concerning the same, even if the subject of the petition is not
19 fully cooperative. If the petitioner believes that further
20 evaluation is necessary before treatment, the petitioner may
21 request further evaluation.



1 [~~(e)~~] (d) The petition shall include the name, address,
2 and telephone number of at least one of the following persons in
3 the following order of priority: the subject of the petition's
4 spouse or reciprocal beneficiary, legal parents, adult children,
5 and legal guardian, if one has been appointed. If the subject
6 of the petition has no living spouse or reciprocal beneficiary,
7 legal parent, adult children, or legal guardian, or if none can
8 be found, the petition shall include the name, address, and
9 telephone number of at least one of the subject's closest adult
10 relatives, if any can be found."

11 SECTION 4. Section 334-133, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Before the expiration of the period of assisted
14 community treatment ordered by the family court, any interested
15 party may file [~~, or may request the department of the attorney
16 general to file,~~] a petition with the family court for an order
17 of continued assisted community treatment. The department of
18 the attorney general shall assist with the preparation and
19 filing of any petition brought pursuant to this section and with
20 the presentation of the case at any related court proceedings;
21 provided that, if the petitioner is a private provider or other



1 private individual, the petitioner may decline the assistance.

2 The petition shall be filed, and unless the court determines the
3 existence of a guardian, a guardian ad litem appointed, and
4 notice provided in the same manner as under sections 334-123 and
5 334-125."

6 SECTION 5. Act 221, Session Laws of Hawaii 2013, as
7 amended by Act 114, Session Laws of Hawaii 2016, is amended by
8 amending section 24 to read as follows:

9 "SECTION 24. This Act shall take effect on January 1, 2014;
10 provided that:

11 (1) Petitions filed pursuant to section 334-123, Hawaii
12 Revised Statutes, for assisted community treatment
13 involving a designated mental health program that is a
14 state-operated provider shall not be filed until after
15 July 1, 2015;

16 (2) Any private provider wishing to file a petition
17 pursuant to section 334-123, Hawaii Revised Statutes,
18 for assisted community treatment may do so after
19 January 1, 2014, [~~using its own resources,~~] if the
20 petitioner is to be the designated mental health
21 program; [~~and~~]



1 (1) Arrested for, charged with, or convicted of an offense
2 or offenses punishable by confinement in jail or
3 prison or for which the person may be or is subject to
4 the provisions of chapter 571;

5 (2) Threatened by confinement, against the indigent
6 person's will, in any psychiatric or other mental
7 institution or facility; or

8 ~~[(3) The subject of a petition for assisted community
9 treatment under chapter 334; or~~

10 ~~-(4)]~~ (3) The subject of a petition for involuntary medical
11 treatment under chapter 353,

12 shall be entitled to be represented by a public defender. If,
13 however, conflicting interests exist, or if the public defender
14 for any other reason is unable to act, or if the interests of
15 justice require, the court may appoint other counsel."

16 PART III

17 SECTION 8. The purpose of this part is to provide a
18 mechanism for nonviolent petty misdemeanor defendants whose
19 fitness to proceed in criminal proceedings remains an
20 outstanding issue to be automatically screened for involuntary
21 hospitalization or assisted community treatment.



1 SECTION 9. Section 704-404, Hawaii Revised Statutes, is
2 amended by amending subsection (2) to read as follows:

3 "(2) Upon suspension of further proceedings in the
4 prosecution:

5 (a) In cases where the defendant is charged with a petty
6 misdemeanor not involving violence or attempted
7 violence, if a court-based certified examiner is
8 available, the court shall appoint the court-based
9 certified examiner to examine and provide an expedited
10 report solely upon the issue of the defendant's
11 capacity to understand the proceedings against the
12 defendant and defendant's ability to assist in the
13 defendant's own defense. The court-based certified
14 examiner shall file the examiner's report with the
15 court within two days of the appointment of the
16 examiner, or as soon thereafter is practicable. A
17 hearing shall be held to determine if the defendant is
18 fit to proceed within two days of the filing of the
19 report, or as soon thereafter as is practicable[+].
20 This paragraph shall not apply to any case under the



1 jurisdiction of the family court unless the presiding
2 judge orders otherwise;

3 (b) In all other nonfelony cases, and where a court-based
4 certified examiner is not available in cases under
5 paragraph (a), the court shall appoint one qualified
6 examiner to examine and report upon the defendant's
7 fitness to proceed. The court may appoint as the
8 examiner either a psychiatrist or a licensed
9 psychologist designated by the director of health from
10 within the department of health; and

11 (c) In felony cases, the court shall appoint three
12 qualified examiners to examine and report upon the
13 defendant's fitness to proceed. The court shall
14 appoint as examiners psychiatrists, licensed
15 psychologists, or qualified physicians; provided that
16 one of the three examiners shall be a psychiatrist or
17 licensed psychologist designated by the director of
18 health from within the department of health.

19 All examiners shall be appointed from a list of certified
20 examiners as determined by the department of health. The court,
21 in appropriate circumstances, may appoint an additional examiner



1 or examiners. The examination may be conducted while the
2 defendant is in custody or on release or, in the court's
3 discretion, when necessary, the court may order the defendant to
4 be committed to a hospital or other suitable facility for the
5 purpose of the examination for a period not exceeding thirty
6 days, or a longer period as the court determines to be necessary
7 for the purpose. The court may direct that one or more
8 qualified physicians or psychologists retained by the defendant
9 be permitted to witness the examination. As used in this
10 section, ~~[the term]~~ "licensed psychologist" includes
11 psychologists exempted from licensure by section 465-3(a)(3) and
12 "qualified physician" means a physician qualified by the court
13 for the specific evaluation ordered."

14 SECTION 10. Section 704-421, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§704-421[+] Proceedings for defendants charged with
17 petty misdemeanors not involving violence or attempted violence;
18 criminal justice diversion program. (1) In cases where the
19 defendant is charged with a petty misdemeanor not involving
20 violence or attempted violence, if, at the hearing held pursuant
21 to section 704-404(2)(a) or at a further hearing held after the



1 appointment of an examiner pursuant to section 704-404(2)(b),
2 the court determines that the defendant is fit to proceed, then
3 the proceedings against the defendant shall resume. In all
4 other cases under this section where fitness remains an
5 outstanding issue, the court shall continue the suspension of
6 the proceedings and either commit the defendant to the custody
7 of the director of health to be placed in a hospital or other
8 suitable facility, including an outpatient facility, for further
9 examination and assessment~~[.]~~ or, in cases where the defendant
10 was not subject to an order of commitment to the director of
11 health for the purpose of the fitness examination under section
12 704-404(2), the court may order that the defendant remain
13 released on conditions the court determines necessary for
14 placement in a group home, residence, or other facility
15 prescribed by the director of health for further assessment by a
16 clinical team pursuant to subsection (3).

17 (2) ~~[Within seven days from the commitment of the~~
18 ~~defendant to the custody of the director of health, or as soon~~
19 ~~thereafter as is practicable, the director of health]~~ In cases
20 under this section where the defendant's fitness to proceed
21 remains an outstanding issue at the hearing held pursuant to



1 section 704-404(2) (a) or a further hearing held after the
2 appointment of an examiner pursuant to section 704-404(2) (b), as
3 applicable, the director of health, within fourteen days of that
4 hearing or as soon thereafter as is practicable, shall report to
5 the court on the following:

6 (a) The defendant's current capacity to understand the
7 proceedings against the defendant and the defendant's
8 current ability to assist in the defendant's own
9 defense[-];

10 (b) Whether, after assessment of the defendant pursuant to
11 subsection (3) (a) or (b), the defendant's clinical
12 team believes that the defendant meets the criteria
13 for involuntary hospitalization under section 334-60.2
14 or assisted community treatment under section 334-121;
15 and

16 (c) The date that the director of health filed a petition
17 for involuntary hospitalization or assisted community
18 treatment on behalf of the defendant pursuant to
19 subsection (3) (a) or (b), as applicable.

20 If, following the report, the court finds the defendant fit to
21 proceed, the proceedings against the defendant shall resume. In



1 all other cases, the court shall dismiss the charge with or
2 without prejudice in the interest of justice. [~~The director of~~
3 ~~health may at any time proceed under the provisions of section~~
4 ~~334-60.2 or 334-121.~~]

5 (3) During the defendant's commitment to the custody of
6 the director of health or release on conditions pursuant to
7 subsection (1):

8 (a) If the defendant's clinical team determines that the
9 defendant meets the criteria for involuntary
10 hospitalization set forth in section 334-60.2, the
11 director of health, within seven days of the clinical
12 team's determination, shall file with the family court
13 a petition for involuntary hospitalization pursuant to
14 section 334-60.3. If the petition is granted, the
15 defendant shall remain hospitalized for a period of
16 time as provided by section 334-60.6; or

17 (b) If the defendant's clinical team determines that the
18 defendant does not meet the criteria for involuntary
19 hospitalization, or the court denies the petition for
20 involuntary hospitalization, the defendant's clinical
21 team shall determine whether an assisted community



1 treatment plan is appropriate pursuant to part VIII of
2 chapter 334. If the clinical team determines that an
3 assisted community treatment plan is appropriate, the
4 psychiatrist or advanced practice registered nurse
5 from the clinical team shall prepare the certificate
6 for assisted community treatment specified by section
7 334-123, including a written treatment plan for the
8 provision of mental health services to the defendant.
9 The clinical team shall identify a community mental
10 health outpatient program that agrees to provide
11 mental health services to the defendant as the
12 designated mental health program under the assisted
13 community treatment order. The clinical team shall
14 provide the defendant with a copy of the certificate.
15 Within ten days of provision of the certificate to the
16 defendant by the clinical team, the director of health
17 shall file with the family court the assisted
18 community treatment petition described in section 334-
19 123. When a petition for assisted community treatment
20 has been filed for a defendant, the defendant
21 committed to the custody of the director of health



1 shall remain in custody until the family court issues
2 a decision on the petition.

3 (4) This section shall not apply to any case under the
4 jurisdiction of the family court unless the presiding judge
5 orders otherwise."

6 SECTION 11. Section 710-1021, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§710-1021 Escape in the second degree.** (1) A person
9 commits the offense of escape in the second degree if the person
10 intentionally escapes from a correctional or detention facility
11 or from custody.

12 (2) Escape in the second degree [~~is~~] shall be a class C
13 felony.

14 (3) Notwithstanding subsection (2), if the offense was
15 committed by a person under the custody of the director of
16 health pursuant to section 704-421(1) for a petty misdemeanor
17 not involving violence or attempted violence, escape in the
18 second degree shall be a petty misdemeanor; provided that if the
19 person is arrested for a new felony offense in the course of the
20 escape or during the pendency of the escape, this subsection
21 shall not apply."



1 PART IV

2 SECTION 12. The purpose of this part is to authorize
3 courts to require a probation violator to undergo a mental
4 health evaluation and treatment program as a condition of
5 continued probation whenever there is reason to believe that the
6 probation violation is associated with a mental disease,
7 disorder, or defect of the defendant.

8 SECTION 13. Section 706-625, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§706-625 Revocation, modification of probation**
11 **conditions.** (1) The court, on application of a probation
12 officer, the prosecuting attorney, the defendant, or on its own
13 motion, after a hearing, may revoke probation except as provided
14 in [~~subsection~~] subsections (6) and (7), reduce or enlarge the
15 conditions of a sentence of probation, pursuant to the
16 provisions applicable to the initial setting of the conditions
17 and the provisions of section 706-627.

18 (2) The prosecuting attorney, the defendant's probation
19 officer, and the defendant shall be notified by the movant in
20 writing of the time, place, and date of any such hearing, and of
21 the grounds upon which action under this section is proposed.



1 The prosecuting attorney, the defendant's probation officer, and
2 the defendant may appear in the hearing to oppose or support the
3 application, and may submit evidence for the court's
4 consideration. The defendant shall have the right to be
5 represented by counsel. For purposes of this section, the court
6 shall not be bound by the Hawaii rules of evidence, except for
7 the rules pertaining to privileges.

8 (3) The court shall revoke probation if the defendant has
9 inexcusably failed to comply with a substantial requirement
10 imposed as a condition of the order or has been convicted of a
11 felony. The court may revoke the suspension of sentence or
12 probation if the defendant has been convicted of another crime
13 other than a felony.

14 (4) The court may modify the requirements imposed on the
15 defendant or impose further requirements, if it finds that such
16 action will assist the defendant in leading a law-abiding life.

17 (5) When the court revokes probation, it may impose on the
18 defendant any sentence that might have been imposed originally
19 for the crime of which the defendant was convicted.

20 ~~[(6) As used in this section, "conviction" means that a~~
21 ~~judgment has been pronounced upon the verdict.~~



1 ~~(7)]~~ (6) The court may require a defendant to undergo and
2 complete a substance abuse treatment program when the defendant
3 has committed a violation of the terms and conditions of
4 probation involving possession or use, not including to
5 distribute or manufacture as defined in section 712-1240, of any
6 dangerous drug, detrimental drug, harmful drug, intoxicating
7 compound, marijuana, or marijuana concentrate, as defined in
8 section 712-1240, unlawful methamphetamine trafficking as
9 provided in section 712-1240.6, or involving possession or use
10 of drug paraphernalia under section 329-43.5. If the defendant
11 fails to complete the substance abuse treatment program or the
12 court determines that the defendant cannot benefit from any
13 other suitable substance abuse treatment program, the defendant
14 shall be subject to revocation of probation and incarceration.
15 The court may require the defendant to:

- 16 (a) Be assessed by a certified substance abuse counselor
17 for substance abuse dependency or abuse under the
18 applicable Diagnostic and Statistical Manual and
19 Addiction Severity Index;
- 20 (b) Present a proposal to receive substance abuse
21 treatment in accordance with the treatment plan



1 prepared by a certified substance abuse counselor
2 through a substance abuse treatment program that
3 includes an identified source of payment for the
4 treatment program;

5 (c) Contribute to the cost of the substance abuse
6 treatment program; and

7 (d) Comply with any other terms and conditions of
8 probation.

9 ~~[As used in this subsection, "substance abuse treatment~~
10 ~~program" means drug or substance abuse treatment services~~
11 ~~provided outside a correctional facility by a public, private,~~
12 ~~or nonprofit entity that specializes in treating persons who are~~
13 ~~diagnosed with substance abuse or dependency and preferably~~
14 ~~employs licensed professionals or certified substance abuse~~
15 ~~counselors.~~

16 ~~Nothing in this subsection shall be construed to give rise~~
17 ~~to a cause of action against the State, a state employee, or a~~
18 ~~treatment provider.]~~

19 (7) As a condition of continued probation, the court may
20 require a defendant to undergo a mental health evaluation and
21 treatment program when the defendant has committed a violation



1 of the terms and conditions of probation and there is reason to
2 believe that the violation is associated with a mental disease,
3 disorder, or defect of the defendant. The court may require the
4 defendant to:

5 (a) Be assessed for a mental disease, disorder, or defect
6 by a psychiatrist or psychologist, who shall prepare
7 an appropriate treatment plan;

8 (b) Present a proposal to receive treatment in accordance
9 with the plan prepared pursuant to paragraph (a)
10 through a mental health treatment program that
11 includes an identified source of payment for the
12 treatment program, as applicable;

13 (c) Contribute to the cost of the treatment program, as
14 applicable; and

15 (d) Comply with any other terms and conditions of
16 probation.

17 If the defendant fails to complete the treatment program or
18 the court determines that the defendant cannot benefit from any
19 other suitable treatment program, the defendant may be subject
20 to revocation of probation and incarceration.



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 15. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act shall take effect on July 1, 3000.



Report Title:

Assisted Community Treatment; Involuntary Hospitalization;
Attorney General; Public Defender; Legal Representation;
Nonviolent Defendants; Automatic Screenings; Probation
Violators; Mental Health Treatment

Description:

Part I: requires the Department of the Attorney General to assist with the preparation and filing of petitions for assisted community treatment and with the presentation of the case, unless declined by the petitioner. Part II: repeals language entitling the subject of a petition for assisted community treatment to legal representation by a public defender. Part III: provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Part IV: authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation. Effective 7/1/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

