
A BILL FOR AN ACT

RELATING TO INVOLUNTARY PSYCHIATRIC HOSPITALIZATION.

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

1 SECTION 1. Chapter 334, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV, to be appropriately
3 designated and to read as follows:

4 "§334- Extended involuntary emergency treatment. (a)
5 Persons subject to extended involuntary emergency treatment.
6 Application for extended involuntary emergency treatment may be
7 made for any person who is being treated pursuant to section
8 334-59 whenever the psychiatric facility determines that the
9 need for emergency treatment is likely to extend beyond one
10 hundred twenty hours. The application shall be filed in the
11 appropriate court, and shall state the grounds on which extended
12 involuntary emergency treatment is believed to be necessary.
13 The application shall state the name of any examining physician
14 and the substance of the physician's opinion regarding the
15 mental condition of the person.

16 (b) Appointment of counsel and scheduling of informal
17 hearing. Upon receiving the application, the court shall
18 appoint an attorney who shall represent the person unless it



1 shall appear that the person can afford, and desires to have,
2 private representation. Within twenty-four hours after the
3 application is filed, an informal hearing shall be conducted by
4 a judge and, if practicable, shall be held at the psychiatric
5 facility.

6 (c) Informal hearing on extended involuntary emergency
7 treatment application.

8 (1) At the commencement of the informal hearing, the judge
9 shall inform the person of the nature of the
10 proceedings. Information relevant to whether the
11 person is mentally ill, imminently dangerous to self
12 or others, or is gravely disabled, or is obviously
13 ill, and in need of care or treatment shall be
14 reviewed, including the reasons that continued
15 involuntary treatment is considered necessary. The
16 explanation shall be made by a physician who examined
17 the person and shall be in terms understandable to a
18 layperson. The judge may review any relevant
19 information even if it would normally be excluded
20 under rules of evidence if the judge believes that the
21 information is reliable. The person or the person's
22 representative shall have the right to ask questions



1 of the physician and of any other witnesses and to
2 present any relevant information. At the conclusion
3 of the review, if the judge finds that the person is
4 mentally ill, imminently dangerous to self or others,
5 or is gravely disabled, or is obviously ill, and in
6 need of continued involuntary treatment, the judge
7 shall so certify. Otherwise, the judge shall direct
8 that the facility administrator or designee discharge
9 the person; and

10 (2) A record of the proceedings, which need not be a
11 stenographic record, shall be made. The record shall
12 be kept by the court for at least one year.

13 (d) Contents of certification. A certification for
14 extended involuntary treatment shall be made in writing upon a
15 form adopted by the department and shall include:

16 (1) Findings by the judge as to the reasons that extended
17 involuntary emergency treatment is necessary;

18 (2) A description of the treatment to be provided together
19 with an explanation of the adequacy and
20 appropriateness of the treatment, based upon the
21 information received at the hearing;

22 (3) Any documents required by section 334-59;



1 (4) The application filed pursuant to subsection (a);

2 (5) A statement that the person is represented by counsel;
3 and

4 (6) An explanation of the effect of the certification and
5 the person's continuing right to be represented by
6 counsel.

7 (e) Filing and service. The certification shall be filed
8 with the administrator of the facility and a copy served on the
9 person, any other parties that the person requested to be
10 notified pursuant to section 334-59(d), and on counsel.

11 (f) Effect of certification. Upon the filing and service
12 of a certification for extended involuntary emergency treatment,
13 the person may be given treatment in an approved facility for a
14 period not to exceed four hundred eighty hours.

15 (g) Duration of extended involuntary emergency treatment.
16 Whenever a person is no longer imminently dangerous to self or
17 others, or gravely disabled, or obviously ill, or in need of
18 care or treatment, and in, any event, within twenty days after
19 the filing of the certification, the person shall be discharged,
20 unless within the period:

21 (1) The person is admitted to voluntary treatment pursuant
22 to section 334-60.1; or



1 (2) The court orders involuntary treatment pursuant to
2 section 334-60.5."

3 SECTION 2. Section 334-60.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§334-60.3 Initiation of proceeding for court-ordered**
6 **involuntary hospitalization.** (a) Procedures for initiating
7 court-ordered involuntary treatment for persons already subject
8 to involuntary treatment. Petition for court-ordered
9 involuntary treatment for persons already subject to treatment
10 under sections 334-59 and 334- , may be made by the director
11 or the administrator of the psychiatric facility to the court.
12 The petition shall be in writing upon a form adopted by the
13 department and shall include a statement of the facts
14 constituting reasonable grounds to believe that the subject of
15 the petition is mentally ill, is imminently dangerous to self or
16 others, or is gravely disabled, or is obviously ill, and in need
17 of care or treatment. The petition shall state the name of any
18 examining physician and the substance of the physician's opinion
19 regarding the mental condition of the subject, and that the
20 subject has been given the required information regarding the
21 subject's rights. Upon the filing of the petition, the director
22 shall serve a copy on the subject, the subject's attorney, and



1 those designated to be kept informed, as provided in section
2 334-59, including an explanation of the nature of the
3 proceedings and the subject's right to an attorney and the
4 services of an expert in the field of mental health. A hearing
5 on the petition shall be held in all cases, not more than ten
6 days after the filing of the petition. Treatment shall be
7 permitted to be maintained pending the determination of the
8 petition.

9 Where a petition is filed for a person already subject to
10 involuntary treatment, it shall be sufficient to represent, and
11 upon hearing to reestablish, that the conduct originally
12 required for emergency treatment in fact occurred, and that the
13 person's condition continues to evidence the criteria for
14 commitment.

15 (b) Procedures for initiating court-ordered involuntary
16 treatment for persons not in involuntary treatment. Any person
17 may file a petition alleging that a person located in the county
18 not already in involuntary treatment for whom application could
19 be made meets the criteria for commitment to a psychiatric
20 facility. The petition shall be in writing upon a form adopted
21 by the department and shall set forth facts constituting
22 reasonable grounds to believe that the subject of the petition



1 is mentally ill, is imminently dangerous to self or others, or
2 is gravely disabled, or is obviously ill, and in need of care or
3 treatment. The petition shall state the name of any examining
4 physician and the substance of the physician's opinion regarding
5 the mental condition of the subject of the petition. The
6 petition shall be executed subject to the penalties of perjury
7 but need not be sworn to before a notary public. The attorney
8 general, the attorney general's deputy, special deputy, or
9 appointee designated to present the case shall assist the
10 petitioner to state the substance of the petition in plain and
11 simple language. The petition may be accompanied by a
12 certificate of the licensed physician or psychologist who has
13 examined the ~~[person]~~ subject within two days before submission
14 of the petition, unless the ~~[person]~~ subject whose commitment is
15 sought has refused to submit to medical or psychological
16 examination, in which case the fact of refusal shall be alleged
17 in the petition. The certificate shall set forth the signs and
18 symptoms relied upon by the physician or psychologist to
19 determine the ~~[person]~~ subject is in need of care or treatment,
20 ~~[or both,]~~ and whether or not the ~~[person]~~ subject is capable of
21 realizing and making a rational decision with respect to the
22 ~~[person's]~~ subject's need for treatment. If the petitioner



1 believes that further evaluation is necessary before commitment,
2 the petitioner may request [~~such~~] further evaluation.

3 ~~[(b) In the event]~~ If the subject of the petition has been
4 given an examination, evaluation, or treatment in a psychiatric
5 facility within five days before submission of the petition, and
6 hospitalization is recommended by the staff of the facility, the
7 petition may be accompanied by the administrator's certificate
8 in lieu of a physician's or psychologist's certificate.

9 Upon a determination that the petition sets forth
10 reasonable cause, the court shall appoint an attorney to
11 represent the subject of the petition and set a date for the
12 hearing as soon as practicable. The attorney shall represent
13 the subject unless it shall appear that the subject can afford,
14 and desires to have, private representation.

15 The court, by summons, shall direct the subject to appear
16 for a hearing. The court may issue a warrant directing a person
17 authorized by the director or a police officer to bring the
18 subject before the court at the time of the hearing if there are
19 reasonable grounds to believe that the subject will not appear
20 voluntarily. A copy of the petition shall be served on the
21 subject at least three days before the hearing together with a
22 notice advising the subject that an attorney has been appointed



1 who shall represent the subject unless the subject obtains an
2 attorney oneself, that the subject has a right to be assisted in
3 the proceedings by an expert in the field of mental health, and
4 that the subject may request or be made subject to psychiatric
5 examination.

6 Upon motion of either the petitioner or the subject of the
7 petition, or upon its own motion, the court may order the
8 subject of the petition to be examined by a psychiatrist
9 appointed by the court. The examination shall be conducted on
10 an outpatient basis, and the subject shall have the right to
11 have counsel present. A report of the examination shall be
12 given to the court and counsel at least forty-eight hours prior
13 to the hearing.

14 Involuntary treatment shall not be authorized during the
15 pendency of a petition except as otherwise provided by law.

16 (c) The subject of the petition shall have and be informed
17 of a right to employ a physician, clinical psychologist, or
18 other mental health expert of the subject's choice to assist the
19 subject in connection with the hearing and to testify on the
20 subject's behalf. If the subject cannot afford to engage a
21 mental health expert, the court, upon application, shall allow a



1 reasonable fee for that purpose. The fee shall be a charge
2 against the department."

3 SECTION 3. Section 334-60.5, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (b) to read:

6 "(b) ~~[The time and form of the procedure incident to~~
7 ~~hearing the issues in the petition shall be provided by court~~
8 ~~rule.]~~ Unless the hearing is waived, the judge shall hear the
9 petition as soon as possible and no later than ten days after
10 the date the petition is filed unless a reasonable delay is
11 sought for good cause shown by the subject of the petition, the
12 subject's attorney, or those persons entitled to receive notice
13 of the hearing under section 334-60.4.

14 The time and form of the procedure incident to hearing the
15 issues in the petition shall be determined by court rule,
16 provided that:

17 (1) The subject shall have the right to counsel and to the
18 assistance of a mental health expert;

19 (2) The subject shall not be called as a witness without
20 the subject's consent;



1 (3) The subject shall have the right to confront and
2 cross-examine all witnesses and to present evidence in
3 the subject's own behalf;

4 (4) A stenographic or other sufficient record shall be
5 made, which shall be kept by the court and may be
6 obtained or examined only upon the request of the
7 subject or the subject's counsel or by order of the
8 court on good cause shown;

9 (5) The hearing shall be conducted by a judge and may be
10 held at a location other than a courthouse when doing
11 so appears to be in the best interest of the subject;
12 and

13 (6) A decision shall be rendered within forty-eight hours
14 after the close of evidence."

15 2. By amending subsection (d) to read:

16 "(d) Hearings may be held at any convenient place within
17 the circuit. The subject of the petition, any interested
18 person, or the court on its own motion may request a hearing in
19 another circuit because of convenience to the parties,
20 witnesses, or the court or because of the ~~[individual's]~~
21 subject's mental or physical condition."



1 3. By amending subsection (i) to read:

2 "(i) If after hearing all relevant evidence, including the
3 result of any diagnostic examination ordered by the court, the
4 court finds that ~~[an individual is not a person requiring]~~ the
5 subject does not require medical, psychiatric, psychological, or
6 other rehabilitative treatment or supervision, the court shall
7 order that the ~~[individual]~~ subject be discharged if the
8 ~~[individual]~~ subject has been hospitalized prior to the hearing.

9 If the court finds that the criteria for involuntary
10 hospitalization under section 334-60.2(1) ~~[has]~~ have been met
11 beyond a reasonable doubt and that the criteria under ~~[sections]~~
12 section 334-60.2(2) and 334-60.2(3) have been met by clear and
13 convincing evidence, the court may issue an order to any police
14 officer to deliver the subject to a facility that has agreed to
15 admit the subject as an involuntary patient, or if the subject
16 is already a patient in a psychiatric facility, authorize the
17 facility to retain the patient for treatment for a period of
18 ninety days unless sooner discharged. Inpatient treatment shall
19 be deemed appropriate only after full consideration has been
20 given to less restrictive alternatives. Investigation of
21 treatment alternatives shall include consideration of the
22 subject's relationship to the subject's community and family,



1 the subject's employment possibilities, all available community
2 resources, and guardianship services. An order of commitment
3 shall include findings on this issue. An order of commitment
4 shall specify which of those persons served with notice pursuant
5 to section 334-60.4, together with ~~[such]~~ any other persons as
6 the court may designate, shall be entitled to receive any
7 subsequent notice of intent to discharge, transfer, or
8 recommit."

9 SECTION 4. Section 334-60.6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§334-60.6 Period of detention.** (a) The psychiatric
12 facility may detain a subject for a period of time ordered by
13 the court not to exceed ninety days from the date of admission
14 unless sooner discharged by the facility pursuant to section
15 ~~[334-76 or section 334-74.]~~ 334-74 or 334-76. At the end of the
16 ninety-day period, the subject shall be discharged automatically
17 except as provided in sections 704-406, 704-411, and 706-607,
18 unless before expiration of the period and by a proceeding
19 initiated pursuant to section 334-60.3, the facility obtains a
20 court order for the subject's recommitment. Recombitment for a
21 period not to exceed ninety days may not be ordered unless the
22 court determines that the criteria for involuntary



1 hospitalization set forth in section 334-60.2 continue to exist.
2 If at the end of a recommitment period the court finds that the
3 criteria for involuntary hospitalization set forth in section
4 334-60.2 continue to exist and are likely to continue beyond
5 ninety days, the court may order recommitment for a period not
6 to exceed one hundred eighty days.

7 **(b)** Nothing in this section shall preclude a facility from
8 accepting for voluntary inpatient treatment, in accordance with
9 the procedures in section 334-60.1, a patient, for whom the
10 facility contemplates discharge pursuant to section 334-60.7 and
11 who voluntarily agrees to further hospitalization after the
12 period of commitment has expired, or where the patient is no
13 longer a proper subject for commitment."

14 SECTION 5. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on January 7, 2059.



Report Title:

Mental Health; Involuntary Psychiatric Hospitalization

Description:

Establishes new procedures for the examination and involuntary hospitalization of persons that meet criteria for commitment to psychiatric facilities. Effective 1/7/2059. (HD2)

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