

JAN 19 2017

A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

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

1 SECTION 1. The purpose of this Act is to ensure that when
2 an individual with a mental health emergency is subject to
3 certain procedures and actions, sufficient notice is given to
4 designated family members, friends, and other interested persons
5 of the proceedings and actions and the individual's whereabouts.

6 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§334- Notice of admissions, examinations,
10 hospitalizations, transfers, releases, and discharges. Notice
11 of a person's emergency admission, examination, hospitalization,
12 transfer, release, or discharge under this chapter shall be
13 given to at least one of the following individuals in the
14 following order of priority: the person's spouse or reciprocal
15 beneficiary, legal parents, adult children, legal guardian, if
16 one has been appointed, closest adult relative, and adult friend
17 who has a significant relationship with the person. Notice



1 shall be given by the director of the facility at which the
2 person is being admitted, examined, or hospitalized, or from
3 which the person is being released or discharged, as soon as
4 practicable and using the most practical means. If notice is
5 not achieved by written means, that fact shall be documented in
6 the person's medical records. If the director is unable to
7 locate or reach any individual entitled to receive notice, the
8 efforts to locate or reach those individuals shall be documented
9 in the person's medical records. Notice requirements under this
10 section shall be in addition to any other requirements required
11 by this chapter."

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

14 **"§334-60.3 Initiation of proceeding for involuntary**
15 **hospitalization.** (a) Any person may file a petition alleging
16 that a person located in the county meets the criteria for
17 commitment to a psychiatric facility. The petition shall be
18 executed subject to the penalties of perjury but need not be
19 sworn to before a notary public. The attorney general, the
20 attorney general's deputy, special deputy, or appointee
21 designated to present the case shall assist the petitioner to



S.B. NO. 122

1 state the substance of the petition in plain and simple
2 language. The petition may be accompanied by a certificate of
3 the licensed physician, advanced practice registered nurse, or
4 psychologist who has examined the person within two days before
5 submission of the petition, unless the person whose commitment
6 is sought has refused to submit to medical or psychological
7 examination, in which case the fact of refusal shall be alleged
8 in the petition. The certificate shall set forth the signs and
9 symptoms relied upon by the physician, advanced practice
10 registered nurse, or psychologist to determine the person is in
11 need of care or treatment, or both, and whether or not the
12 person is capable of realizing and making a rational decision
13 with respect to the person's need for treatment. If the
14 petitioner believes that further evaluation is necessary before
15 commitment, the petitioner may request such further evaluation.

16 (b) In the event the subject of the petition has been
17 given an examination, evaluation, or treatment in a psychiatric
18 facility within five days before submission of the petition, and
19 hospitalization is recommended by the staff of the facility, the
20 petition may be accompanied by the administrator's certificate
21 in lieu of a physician's or psychologist's certificate.



1 (c) The petition shall include the name, address, and
2 telephone number of at least one of the following individuals in
3 the following order of priority: the person's spouse or
4 reciprocal beneficiary, legal parents, adult children, legal
5 guardian, if one has been appointed, closest adult relative, and
6 adult friend who has a significant relationship with the
7 person."

8 SECTION 4. Section 334-60.4, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§334-60.4 Notice; waiver of notice; hearing on petition;**
11 **waiver of hearing on petition for involuntary hospitalization.**

12 (a) The court shall set a hearing on the petition and notice of
13 the time and place of such hearing shall be served in accordance
14 with, and to those persons specified in, a current order of
15 commitment. If there is no current order of commitment, notice
16 of the hearing shall be served personally on the subject of the
17 petition and served personally or by certified or registered
18 mail, return receipt requested, deliverable to the addressee
19 only, on the subject's spouse or reciprocal beneficiary, legal
20 parents, adult children, and legal guardian, if one has been
21 appointed. If the subject of the petition has no living spouse



1 or reciprocal beneficiary, legal parent [~~and~~], adult children,
2 or legal guardian, or if none can be found, notice of the
3 hearing shall be served on at least one of the subject's closest
4 adult relatives if any can be found. If no adult relative can
5 be found, notice shall be served on at least one of the
6 subject's adult friends who has a significant relationship with
7 the person if any can be found. Notice of the hearing shall
8 also be served on the public defender, attorney for the subject
9 of the petition, or other court-appointed attorney as the case
10 may be. If the subject of the petition is a minor, notice of
11 the hearing shall also be served upon the person who has had the
12 principal care and custody of the minor during the sixty days
13 preceding the date of the petition if such person can be found
14 within the State. Notice shall also be given to such other
15 persons as the court may designate.

16 (b) The notice shall include the following:

- 17 (1) The date, time, place of hearing, a clear statement of
18 the purpose of the proceedings and of possible
19 consequences to the subject; and a statement of the
20 legal standard upon which commitment is authorized;
- 21 (2) A copy of the petition;



- 1 (3) A written notice, in plain and simple language, that
- 2 the subject may waive such a hearing by voluntarily
- 3 agreeing to hospitalization, or with the approval of
- 4 the court, to some other form of treatment;
- 5 (4) A filled-out form indicating such waiver;
- 6 (5) A written notice, in plain and simple language, that
- 7 the subject or the subject's guardian or
- 8 representative may apply at any time for a hearing on
- 9 the issue of the subject's need for hospitalization,
- 10 if the subject has previously waived such a hearing;
- 11 (6) Notice that the subject is entitled to the assistance
- 12 of an attorney and that the public defender has been
- 13 notified of these proceedings;
- 14 (7) Notice that if the subject does not want to be
- 15 represented by the public defender the subject may
- 16 contact the subject's own attorney;
- 17 (8) Notice, if such be the case, that the petitioner
- 18 intends to adduce evidence to show that the subject of
- 19 the petition is an incapacitated or protected person,
- 20 or both, under article V of chapter 560, and whether
- 21 or not appointment of a guardian is sought at the



1 hearing. If appointment of a guardian is to be
2 recommended, and a nominee is known at the time the
3 petition is filed, the identity of the nominee shall
4 be disclosed.

5 (c) If the subject executes and files a waiver of the
6 hearing, upon acceptance by the court following a court
7 determination that the person understands the person's rights
8 and is competent to waive them, the court shall order the
9 subject to be committed to a facility that has agreed to admit
10 the subject as an involuntary patient or, if the subject is at
11 such a facility, that the subject be retained there.

12 (d) Notice of adjournments, continuances, other delays,
13 dates of rescheduled hearings, and waivers of the hearing under
14 subsection (c) shall also be served on the individuals specified
15 in subsection (a)."

16 SECTION 5. Section 334-60.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§334-60.5 Hearing on petition.** (a) The court [may]
19 shall adjourn or continue a hearing for failure to timely notify
20 a spouse or reciprocal beneficiary, guardian, relative, or other
21 person determined by the court to be entitled to notice, or for



1 failure by the subject to contact an attorney as provided in
2 section 334-60.4(b)(7) [~~if~~] unless the court determines that the
3 interests of justice [~~se~~] require~~[-]~~ that the hearing continue
4 without adjournment or continuance.

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

13 (c) The subject of the petition shall be present at all
14 hearings unless the subject waives the right to be present, is
15 unable to attend, or creates conditions which make it impossible
16 to conduct the hearing in a reasonable manner as determined by
17 the judge. A waiver is valid only upon acceptance by the court
18 following a judicial determination that the subject understands
19 the subject's rights and is competent to waive them, or is
20 unable to participate. If the subject is unable to participate,
21 the judge shall appoint a guardian ad litem or a temporary



1 guardian as provided in article V of chapter 560, to represent
2 the subject throughout the proceedings.

3 (d) Hearings may be held at any convenient place within
4 the circuit. The subject of the petition, any interested party,
5 or the court on its own motion may request a hearing in another
6 circuit because of convenience to the parties, witnesses, or the
7 court or because of the individual's mental or physical
8 condition.

9 (e) The attorney general, the attorney general's deputy,
10 special deputy, or appointee shall present the case for hearings
11 convened under this chapter, except that the attorney general,
12 the attorney general's deputy, special deputy, or appointee need
13 not participate in or be present at a hearing whenever a
14 petitioner or some other appropriate person has retained private
15 counsel who will be present in court and will present to the
16 court the case for involuntary hospitalization.

17 (f) Counsel for the subject of the petition shall be
18 allowed adequate time for investigation of the matters at issue
19 and for preparation, and shall be permitted to present the
20 evidence that the counsel believes necessary to a proper



1 disposition of the proceedings, including evidence as to
2 alternatives to inpatient hospitalization.

3 (g) No individual may be found to require treatment in a
4 psychiatric facility unless at least one physician, advanced
5 practice registered nurse, or psychologist who has personally
6 examined the individual testifies in person at the hearing.
7 This testimony may be waived by the subject of the petition. If
8 the subject of the petition has refused to be examined by a
9 licensed physician, advanced practice registered nurse, or
10 psychologist, the subject may be examined by a court-appointed
11 licensed physician, advanced practice registered nurse, or
12 psychologist. If the subject refuses and there is sufficient
13 evidence to believe that the allegations of the petition are
14 true, the court may make a temporary order committing the
15 subject to a psychiatric facility for a period of not more than
16 five days for the purpose of a diagnostic examination and
17 evaluation. The subject's refusal shall be treated as a denial
18 that the subject is mentally ill or suffering from substance
19 abuse. Nothing in this section, however, shall limit the
20 individual's privilege against self-incrimination.



1 (h) The subject of the petition in a hearing under this
2 section has the right to secure an independent medical or
3 psychological evaluation and present evidence thereon.

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

11 (j) If the court finds that the criteria for involuntary
12 hospitalization under section 334-60.2(1) has been met beyond a
13 reasonable doubt and that the criteria under sections
14 334-60.2(2) and 334-60.2(3) have been met by clear and
15 convincing evidence, the court may issue an order to any law
16 enforcement officer to deliver the subject to a facility that
17 has agreed to admit the subject as an involuntary patient, or if
18 the subject is already a patient in a psychiatric facility,
19 authorize the facility to retain the patient for treatment for a
20 period of ninety days unless sooner discharged. The court may
21 also authorize the involuntary administration of medication,



1 where the subject has an existing order for assisted community
2 treatment, issued pursuant to part VIII of this chapter,
3 relating to assisted community treatment, and in accordance with
4 the treatment prescribed by that prior order. Notice of the
5 subject's commitment and the facility name and location where
6 the subject will be committed shall be provided to those persons
7 entitled to notice pursuant to section 334-60.4. An order of
8 commitment shall specify which of those persons served with
9 notice pursuant to section 334-60.4, together with such other
10 persons as the court may designate, shall be entitled to receive
11 any subsequent notice of intent to discharge, transfer, or
12 recommit. The court shall forward to the Hawaii criminal
13 justice data center all orders of involuntary civil commitment
14 or information from all orders of involuntary civil commitment,
15 as requested by the Hawaii criminal justice data center, which
16 in turn shall forward the information to the Federal Bureau of
17 Investigation, or its successor agency, for inclusion in the
18 National Instant Criminal Background Check System database. The
19 orders or information shall also be maintained by the Hawaii
20 criminal justice data center for disclosure to and use by law
21 enforcement officials for the purpose of firearms permitting or



1 registration pursuant to chapter 134. This subsection shall
2 apply to all involuntary civil commitments without regard to the
3 date of the involuntary civil commitment.

4 (k) The court may find that the subject of the petition is
5 an incapacitated or protected person, or both, under article V
6 of chapter 560, and may appoint a guardian or conservator, or
7 both, for the subject under the terms and conditions as the
8 court shall determine.

9 (l) Individuals entitled to notice are also entitled to be
10 present in the courtroom for the hearing and, unless the court
11 determines that the interests of justice require otherwise, to
12 receive a copy of the hearing transcript or recording."

13 SECTION 6. Section 334-82, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§334-82 Order to show cause; guardian ad litem.**

16 Immediately upon receipt of a request, the court shall issue an
17 order to show cause directed to the administrator of the
18 facility and commanding the administrator to show cause at a
19 date and time certain not later than five days thereafter why
20 the patient should not be discharged forthwith. A copy of the
21 request shall be attached to the order to show cause. The form



1 of the order to show cause shall be prescribed and supplied free
2 of charge by the court. The order to show cause shall issue
3 without cost and may be served as any other civil process or by
4 any responsible person appointed by the court for that purpose.
5 At any stage of the proceedings, the court may appoint a
6 guardian ad litem for the patient. The guardian ad litem may be
7 a member of the bar of the court or any other responsible
8 person. Service on the administrator may be effected by leaving
9 certified copies of the order to show cause and request at the
10 facility with any person exercising authority. Notice of the
11 order to show cause and the hearing date, and any adjournments,
12 continuances, other delays, and dates of rescheduled hearings
13 shall be provided to those persons entitled to notice pursuant
14 to section 334-60.4."

15 SECTION 7. Section 334-84, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§334-84 Order.** If it is determined that the admission of
18 the patient is regular and that the patient needs continued
19 hospitalization, the court shall issue an order authorizing the
20 detention of the patient at the facility. If it is determined
21 that the admission of the patient is not regular or that the



1 patient does not need continued hospitalization, the court shall
2 issue an order requiring the immediate discharge of the patient
3 from the facility. Notice of the detention or discharge shall
4 be provided to those persons entitled to notice pursuant to
5 section 334-60.4."

6 SECTION 8. Section 334-123, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§334-123 **Initiation of proceeding for assisted community**
9 **treatment.** (a) Any interested party may file a petition with
10 the family court alleging that another person meets the criteria
11 for assisted community treatment. The petition shall state:

12 (1) Each of the criteria numbered (1) through (7) for
13 assisted community treatment, as set out in section
14 334-121;

15 (2) Petitioner's good faith belief that the subject of the
16 petition meets each of the criteria numbered (1)
17 through (7) set forth in section 334-121;

18 (3) Facts which support petitioner's good faith belief
19 that the subject of the petition meets each of the
20 criteria numbered (1) through (7) set forth in section
21 334-121; and



1 (4) That the subject of the petition is present within the
2 county where the petition is filed.

3 The hearing on the petition need not be limited to the
4 facts stated in the petition. The petition shall be executed
5 subject to the penalties of perjury.

6 (b) The petition may be accompanied by a certificate of a
7 licensed psychiatrist who has examined the subject of the
8 petition within twenty calendar days prior to the filing of the
9 petition. For purposes of the petition, an examination shall be
10 considered valid so long as the licensed psychiatrist has
11 obtained enough information from the subject of the petition to
12 reach a diagnosis of the subject of the petition, and to express
13 a professional opinion concerning the same, even if the subject
14 of the petition is not fully cooperative.

15 (c) The petition shall include the name, address, and
16 telephone number of at least one of the following individuals in
17 the following order of priority: the subject of the petition's
18 spouse or reciprocal beneficiary, legal parents, adult children,
19 legal guardian, if one has been appointed, closest adult
20 relative, and adult friend who has a significant relationship
21 with the person."



1 SECTION 9. Section 334-125, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Notice of the hearing shall be:

4 (1) Served personally on the subject of the petition
5 pursuant to family court rules;

6 (2) Served personally or by certified or registered mail,
7 return receipt requested, deliverable to the addressee
8 only, to as many as are known to the petitioner of the
9 subject's spouse or reciprocal beneficiary, legal
10 parents, adult children, and legal guardian, if one
11 has been appointed[+]. If the subject of the petition
12 has no living spouse or reciprocal beneficiary, legal
13 parent, adult children, or legal guardian, or if none
14 can be found, notice of the hearing shall be served on
15 at least one of the subject's closest adult relatives
16 if any can be found. If no adult relative can be
17 found, notice shall be served on at least one of the
18 subject's adult friends who has a significant
19 relationship with the person if any can be found;



1 (3) Served on the public defender, attorney for the
2 subject of the petition, or other court-appointed
3 attorney as applicable; and

4 (4) Given to such other persons as the court may
5 designate."

6 SECTION 10. Section 334-126, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (a) to read:

9 "(a) The court [~~may~~] shall adjourn or continue a hearing
10 for failure to timely notify a person entitled to be notified[-]
11 unless the court determines that the interests of justice
12 require that the hearing continue without adjournment or
13 continuance."

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

15 "(d) The hearing shall be closed to the public, unless the
16 subject of the petition requests otherwise. Individuals
17 entitled to notice are entitled to be present in the courtroom
18 for the hearing and, unless the court determines that the
19 interests of justice require otherwise, to receive a copy of the
20 hearing transcript or recording."



1 SECTION 11. Section 334-127, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) If after hearing all relevant evidence, including the
4 results of any diagnostic examination ordered by the family
5 court, the family court finds that the subject of the petition
6 does not meet the criteria for assisted community treatment, the
7 family court shall dismiss the petition. Notice of the
8 dismissal shall be provided to those persons entitled to notice
9 pursuant to section 334-125.

10 (b) If after hearing all relevant evidence, including the
11 results of any diagnostic examination ordered by the family
12 court, the family court finds that the criteria for assisted
13 community treatment under section 334-121(1) have been met
14 beyond a reasonable doubt and that the criteria under section
15 334-121(2) to 334-121(7) have been met by clear and convincing
16 evidence, the family court shall order the subject to obtain
17 assisted community treatment for a period of not more than one
18 year. The written treatment plan submitted pursuant to section
19 334-126(h) shall be attached to the order and made a part of the
20 order.



1 If the family court finds by clear and convincing evidence
2 that the beneficial mental and physical effects of recommended
3 medication outweigh the detrimental mental and physical effects,
4 if any, the order may authorize types or classes of medication
5 to be included in treatment at the discretion of the treating
6 psychiatrist.

7 The court order shall also state who should receive notice
8 of intent to discharge early in the event that the treating
9 psychiatrist determines, prior to the end of the court ordered
10 period of treatment, that the subject should be discharged early
11 from assisted community treatment.

12 Notice of the order shall be provided to those persons
13 entitled to notice pursuant to section 334-125."

14 SECTION 12. Section 334-129, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§334-129 Failure to comply with assisted community**
17 **treatment.** (a) A treating psychiatrist may prescribe or
18 administer to the subject of the order reasonable and
19 appropriate medication or medications, if specifically
20 authorized by the court order, and treatment which is consistent
21 with accepted medical standards and the family court order,



1 including the written treatment plan submitted pursuant to
2 section 334-126(h).

3 (b) No subject of the order shall be physically forced to
4 take medication under a family court order for assisted
5 community treatment unless the subject is within an emergency
6 department or admitted to a hospital, subsequent to the date of
7 the current assisted community treatment order.

8 (c) A subject may be transported to a designated mental
9 health program, or a hospital emergency department, for failure
10 to comply with an order for assisted community treatment via the
11 following methods:

12 (1) By an interested party with the consent of the subject
13 of the order; or

14 (2) In accordance with section 334-59.

15 (d) The designated mental health program's treating
16 psychiatrist or psychiatrist's designee shall make all
17 reasonable efforts to solicit the subject's compliance with the
18 prescribed treatment. If the subject fails or refuses to comply
19 after the efforts to solicit compliance, the treating
20 psychiatrist shall assess whether the subject of the order meets
21 criteria for admission to a psychiatric facility under part IV



1 of this chapter, and proceed with the admission pursuant to
2 section 334-59(a)(2) or (3); provided that the refusal of
3 treatment shall not, by itself, constitute a basis for
4 involuntary hospitalization.

5 (e) Notice of any transport or admission under this
6 section shall be provided to those persons entitled to notice
7 pursuant to section 334-125."

8 SECTION 13. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 14. This Act shall take effect upon its approval.

11

INTRODUCED BY:

Kal Rhoah



S.B. NO. 122

Report Title:

Mental Health; Admission; Discharge; Notice; Hearings;
Involuntary Hospitalization; Assisted Community Treatment

Description:

Entitles designated family members and other interested persons of a person having a mental health emergency to: notice of certain procedures and actions, option to be present in the courtroom for a hearing on a petition for involuntary hospitalization or assisted community treatment, and option to receive copies of hearing transcripts or recordings. Requires the court to adjourn or continue a hearing on a petition for involuntary hospitalization or assisted community treatment for failure to timely notify designated persons, with certain exceptions.

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

