
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, and
10 hospitalizations. As long as the subject has capacity to make
11 health care decisions and agrees, or is given the opportunity to
12 object and does not object, or the health care provider can
13 reasonably infer from the circumstances based on the exercise of
14 professional judgment that the subject does not object, or as
15 long as the patient is incapacitated or an emergency
16 circumstance exists and the health care provider determines
17 based on the exercise of professional judgment that doing so is
18 in the best interest of the subject, notice of a person's



1 emergency admission, examination, and hospitalization under this
 2 chapter may be given to at least one of the following
 3 individuals in the following order of priority: the person's
 4 spouse or reciprocal beneficiary, legal parents, adult children,
 5 legal guardian, if one has been appointed, or if none can be
 6 found, the closest adult relative."

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

9 **"§334-60.3 Initiation of proceeding for involuntary**
 10 **hospitalization.** (a) Any person may file a petition alleging
 11 that a person located in the county meets the criteria for
 12 commitment to a psychiatric facility. The petition shall be
 13 executed subject to the penalties of perjury but need not be
 14 sworn to before a notary public. The attorney general, the
 15 attorney general's deputy, special deputy, or appointee
 16 designated to present the case shall assist the petitioner to
 17 state the substance of the petition in plain and simple
 18 language. The petition may be accompanied by a certificate of
 19 the licensed physician, advanced practice registered nurse, or
 20 psychologist who has examined the person within two days before
 21 submission of the petition, unless the person whose commitment



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

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

17 (c) The petition shall include the name, address, and
18 telephone number of at least one of the following individuals in
19 the following order of priority: the person's spouse or
20 reciprocal beneficiary, legal parents, adult children, and legal
21 guardian, if one has been appointed. If the subject has no



1 living spouse or reciprocal beneficiary, legal parent, or adult
2 children, or if none can be found, notice shall be served on at
3 least one of the subject's closest adult relatives if any can be
4 found."

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

7 "**§334-60.4 Notice; waiver of notice; hearing on petition;**
8 **waiver of hearing on petition for involuntary hospitalization.**

9 (a) The court shall set a hearing on the petition and notice of
10 the time and place of such hearing shall be served in accordance
11 with, and to those persons specified in, a current order of
12 commitment. If there is no current order of commitment, notice
13 of the hearing shall be served personally on the subject of the
14 petition and served personally or by certified or registered
15 mail, return receipt requested, deliverable to the addressee
16 only, on the subject's spouse or reciprocal beneficiary, legal
17 parents, adult children, and legal guardian, if one has been
18 appointed. If the subject of the petition has no living spouse
19 or reciprocal beneficiary, legal parent [~~and~~], adult children,
20 or legal guardian, or if none can be found, notice of the
21 hearing shall be served on at least one of the subject's closest



1 adult relatives if any can be found. Notice of the hearing
2 shall also be served on the public defender, attorney for the
3 subject of the petition, or other court-appointed attorney as
4 the case may be. If the subject of the petition is a minor,
5 notice of the hearing shall also be served upon the person who
6 has had the principal care and custody of the minor during the
7 sixty days preceding the date of the petition if such person can
8 be found within the State. Notice shall also be given to such
9 other persons as the court may designate.

10 (b) The notice shall include the following:

11 (1) The date, time, place of hearing, a clear statement of
12 the purpose of the proceedings and of possible
13 consequences to the subject; and a statement of the
14 legal standard upon which commitment is authorized;

15 (2) A copy of the petition;

16 (3) A written notice, in plain and simple language, that
17 the subject may waive such a hearing by voluntarily
18 agreeing to hospitalization, or with the approval of
19 the court, to some other form of treatment;

20 (4) A filled-out form indicating such waiver;



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



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

8 (d) Notice of adjournments, continuances, other delays,
 9 dates of rescheduled hearings, and waivers of the hearing under
 10 subsection (c) shall also be served on the individuals specified
 11 in subsection (a)."

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

14 "**§334-60.5 Hearing on petition.** (a) The court [may]
 15 shall adjourn or continue a hearing for failure to timely notify
 16 a spouse or reciprocal beneficiary, guardian, relative, or other
 17 person determined by the court to be entitled to notice, or for
 18 failure by the subject to contact an attorney as provided in
 19 section 334-60.4(b)(7) [~~is~~] unless the court determines that the
 20 interests of justice [se] require[-] that the hearing continue
 21 without adjournment or continuance.



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

9 (c) The subject of the petition shall be present at all
10 hearings unless the subject waives the right to be present, is
11 unable to attend, or creates conditions which make it impossible
12 to conduct the hearing in a reasonable manner as determined by
13 the judge. A waiver is valid only upon acceptance by the court
14 following a judicial determination that the subject understands
15 the subject's rights and is competent to waive them, or is
16 unable to participate. If the subject is unable to participate,
17 the judge shall appoint a guardian ad litem or a temporary
18 guardian as provided in article V of chapter 560, to represent
19 the subject throughout the proceedings.

20 (d) Hearings may be held at any convenient place within
21 the circuit. The subject of the petition, any interested party,



1 or the court on its own motion may request a hearing in another
2 circuit because of convenience to the parties, witnesses, or the
3 court or because of the individual's mental or physical
4 condition.

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

13 (f) Counsel for the subject of the petition shall be
14 allowed adequate time for investigation of the matters at issue
15 and for preparation, and shall be permitted to present the
16 evidence that the counsel believes necessary to a proper
17 disposition of the proceedings, including evidence as to
18 alternatives to inpatient hospitalization.

19 (g) No individual may be found to require treatment in a
20 psychiatric facility unless at least one physician, advanced
21 practice registered nurse, or psychologist who has personally



1 examined the individual testifies in person at the hearing.
2 This testimony may be waived by the subject of the petition. If
3 the subject of the petition has refused to be examined by a
4 licensed physician, advanced practice registered nurse, or
5 psychologist, the subject may be examined by a court-appointed
6 licensed physician, advanced practice registered nurse, or
7 psychologist. If the subject refuses and there is sufficient
8 evidence to believe that the allegations of the petition are
9 true, the court may make a temporary order committing the
10 subject to a psychiatric facility for a period of not more than
11 five days for the purpose of a diagnostic examination and
12 evaluation. The subject's refusal shall be treated as a denial
13 that the subject is mentally ill or suffering from substance
14 abuse. Nothing in this section, however, shall limit the
15 individual's privilege against self-incrimination.

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

19 (i) If after hearing all relevant evidence, including the
20 result of any diagnostic examination ordered by the court, the
21 court finds that an individual is not a person requiring



1 medical, psychiatric, psychological, or other rehabilitative
2 treatment or supervision, the court shall order that the
3 individual be discharged if the individual has been hospitalized
4 prior to the hearing.

5 (j) If the court finds that the criteria for involuntary
6 hospitalization under section 334-60.2(1) has been met beyond a
7 reasonable doubt and that the criteria under sections
8 334-60.2(2) and 334-60.2(3) have been met by clear and
9 convincing evidence, the court may issue an order to any law
10 enforcement officer to deliver the subject to a facility that
11 has agreed to admit the subject as an involuntary patient, or if
12 the subject is already a patient in a psychiatric facility,
13 authorize the facility to retain the patient for treatment for a
14 period of ninety days unless sooner discharged. The court may
15 also authorize the involuntary administration of medication,
16 where the subject has an existing order for assisted community
17 treatment, issued pursuant to part VIII of this chapter,
18 relating to assisted community treatment, and in accordance with
19 the treatment prescribed by that prior order. Notice of the
20 subject's commitment and the facility name and location where
21 the subject will be committed shall be provided to those persons



1 entitled to notice pursuant to section 334-60.4. An order of
2 commitment shall specify which of those persons served with
3 notice pursuant to section 334-60.4, together with such other
4 persons as the court may designate, shall be entitled to receive
5 any subsequent notice of intent to discharge, transfer, or
6 recommit. The court shall forward to the Hawaii criminal
7 justice data center all orders of involuntary civil commitment
8 or information from all orders of involuntary civil commitment,
9 as requested by the Hawaii criminal justice data center, which
10 in turn shall forward the information to the Federal Bureau of
11 Investigation, or its successor agency, for inclusion in the
12 National Instant Criminal Background Check System database. The
13 orders or information shall also be maintained by the Hawaii
14 criminal justice data center for disclosure to and use by law
15 enforcement officials for the purpose of firearms permitting or
16 registration pursuant to chapter 134. This subsection shall
17 apply to all involuntary civil commitments without regard to the
18 date of the involuntary civil commitment.

19 (k) The court may find that the subject of the petition is
20 an incapacitated or protected person, or both, under article V
21 of chapter 560, and may appoint a guardian or conservator, or



1 both, for the subject under the terms and conditions as the
2 court shall determine.

3 (1) Individuals entitled to notice are also entitled to be
4 present in the courtroom for the hearing and to receive a copy
5 of the hearing transcript or recording, unless the court
6 determines that the interests of justice require otherwise."

7 SECTION 6. Section 334-60.7, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) [~~For civil commitments that result directly from~~
10 ~~legal proceedings under chapters 704 and 706, when]~~ When the
11 administrator or attending physician of a psychiatric facility
12 contemplates discharge of an involuntary patient because of
13 expiration of the court order for commitment or because the
14 patient is no longer a proper subject for commitment, as
15 determined by the criteria for involuntary hospitalization in
16 section 334-60.2, the administrator or attending physician shall
17 provide notice of intent to discharge, or if the patient
18 voluntarily agrees to further hospitalization, the administrator
19 shall provide notice of the patient's admission to voluntary
20 inpatient treatment. The following requirements and procedures
21 shall apply:



- 1 (1) The notice and a certificate of service shall be filed
2 with the family court and served on those persons whom
3 the order of commitment specifies as entitled to
4 receive notice, by mail at the person's last known
5 address. Notice shall also be sent to the prosecuting
6 attorney of the county from which the person was
7 originally committed, by facsimile or electronically,
8 for the sole purpose of victim notification;
- 9 (2) Any person specified as entitled to receive notice may
10 waive this right in writing with the psychiatric
11 facility;
- 12 (3) If no objection is filed within five calendar days of
13 mailing the notice, the administrator or attending
14 physician of the psychiatric facility shall discharge
15 the patient or accept the patient for voluntary
16 inpatient treatment;
- 17 (4) If any person specified as entitled to receive notice
18 files a written objection, with a certificate of
19 service, to the discharge or to the patient's
20 admission to voluntary inpatient treatment on the
21 grounds that the patient is a proper subject for



1 commitment, the family court shall conduct a hearing
 2 as soon as possible, prior to the termination of the
 3 current commitment order, to determine if the patient
 4 still meets the criteria for involuntary
 5 hospitalization in section 334-60.2. The person
 6 filing the objection shall also notify the psychiatric
 7 facility by telephone on the date the objection is
 8 filed;

9 (5) If the family court finds that the patient does not
 10 meet the criteria for involuntary hospitalization in
 11 section 334-60.2, the court shall issue an order of
 12 discharge from the commitment; and

13 (6) If the family court finds that the patient does meet
 14 the criteria for involuntary hospitalization in
 15 section 334-60.2, the court shall issue an order
 16 denying discharge from the commitment."

17 SECTION 7. Section 334-82, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§334-82 Order to show cause; guardian ad litem.**

20 Immediately upon receipt of a request, the court shall issue an
 21 order to show cause directed to the administrator of the



1 facility and commanding the administrator to show cause at a
2 date and time certain not later than five days thereafter why
3 the patient should not be discharged forthwith. A copy of the
4 request shall be attached to the order to show cause. The form
5 of the order to show cause shall be prescribed and supplied free
6 of charge by the court. The order to show cause shall issue
7 without cost and may be served as any other civil process or by
8 any responsible person appointed by the court for that purpose.
9 At any stage of the proceedings, the court may appoint a
10 guardian ad litem for the patient. The guardian ad litem may be
11 a member of the bar of the court or any other responsible
12 person. Service on the administrator may be effected by leaving
13 certified copies of the order to show cause and request at the
14 facility with any person exercising authority. Notice of the
15 order to show cause and the hearing date, and any adjournments,
16 continuances, other delays, and dates of rescheduled hearings
17 shall be provided to those persons entitled to notice pursuant
18 to section 334-60.4."

19 SECTION 8. Section 334-84, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§334-84 Order.** If it is determined that the admission of
2 the patient is regular and that the patient needs continued
3 hospitalization, the court shall issue an order authorizing the
4 detention of the patient at the facility. If it is determined
5 that the admission of the patient is not regular or that the
6 patient does not need continued hospitalization, the court shall
7 issue an order requiring the immediate discharge of the patient
8 from the facility. Notice of the detention or discharge shall
9 be provided to those persons entitled to notice pursuant to
10 section 334-60.4."

11 SECTION 9. Section 334-123, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§334-123 Initiation of proceeding for assisted community**
14 **treatment.** (a) Any interested party may file a petition with
15 the family court alleging that another person meets the criteria
16 for assisted community treatment. The petition shall state:

17 (1) Each of the criteria numbered (1) through (7) for
18 assisted community treatment, as set out in section
19 334-121;



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

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

8 (4) That the subject of the petition is present within the
9 county where the petition is filed.

10 The hearing on the petition need not be limited to the
11 facts stated in the petition. The petition shall be executed
12 subject to the penalties of perjury.

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



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 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 has no spouse or reciprocal beneficiary, legal parent, or adult
7 children, or if none can be found, the petition shall include
8 the name, address, and telephone number of at least one of the
9 subject's closest adult relatives if any can be found."

10 SECTION 10. Section 334-125, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

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

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

15 (2) Served personally or by certified or registered mail,
16 return receipt requested, deliverable to the addressee
17 only, to as many as are known to the petitioner of the
18 subject's spouse or reciprocal beneficiary, legal
19 parents, adult children, and legal guardian, if one
20 has been appointed[+]. If the subject of the petition
21 has no spouse or reciprocal beneficiary, legal parent,



1 adult children, or legal guardian, or if none can be
2 found, notice of the hearing shall be served on at
3 least one of the subject's closest adult relatives if
4 any can be found;

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

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

10 SECTION 11. Section 334-126, Hawaii Revised Statutes, is
11 amended as follows:

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

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

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

19 "(d) The hearing shall be closed to the public, unless the
20 subject of the petition requests otherwise. Individuals
21 entitled to notice are entitled to be present in the courtroom



1 for the hearing and to receive a copy of the hearing transcript
2 or recording, unless the court determines that the interests of
3 justice require otherwise."

4 SECTION 12. Section 334-127, Hawaii Revised Statutes, is
5 amended by amending subsections (a) and (b) to read as follows:

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

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



1 334-126(h) shall be attached to the order and made a part of the
2 order.

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

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

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

16 SECTION 13. Section 334-129, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§334-129 Failure to comply with assisted community**
19 **treatment.** (a) A treating psychiatrist may prescribe or
20 administer to the subject of the order reasonable and
21 appropriate medication or medications, if specifically



1 authorized by the court order, and treatment which is consistent
2 with accepted medical standards and the family court order,
3 including the written treatment plan submitted pursuant to
4 section 334-126(h).

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

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

14 (1) By an interested party with the consent of the subject
15 of the order; or

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

17 (d) The designated mental health program's treating
18 psychiatrist or psychiatrist's designee shall make all
19 reasonable efforts to solicit the subject's compliance with the
20 prescribed treatment. If the subject fails or refuses to comply
21 after the efforts to solicit compliance, the treating



1 psychiatrist shall assess whether the subject of the order meets
2 criteria for admission to a psychiatric facility under part IV
3 of this chapter, and proceed with the admission pursuant to
4 section 334-59(a)(2) or (3); provided that the refusal of
5 treatment shall not, by itself, constitute a basis for
6 involuntary hospitalization.

7 (e) Notice of any transport or admission under this
8 section shall be provided to those persons whom the order for
9 assisted community treatment specifies is entitled to receive
10 notice."

11 SECTION 14. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 15. This Act shall take effect upon its approval.
14



Report Title:

Mental Health; Admission; Examination; Treatment; 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 emergency admission, examination, and hospitalization. Entitles designated family members and other interested persons to the option to be present in the courtroom for a hearing on a petition for involuntary hospitalization or assisted community treatment and the option to receive copies of hearing transcripts or recordings, unless the court determines that the interests of justice require otherwise. Requires notice of discharge and voluntary inpatient treatment when forensic and non-forensic patients are civilly committed to individuals specified in the order of commitment. 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.
(SD1)

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

