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# 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 (3) Any interested party wishing to file a petition  
2 pursuant to section 334-123, Hawaii Revised Statutes,  
3 for assisted community treatment may do so after  
4 January 1, 2014, [~~using the party's own resources,~~] if  
5 the designated mental health program is a private  
6 provider[~~-~~]; and

7 (4) After July 1, 2024, the department of the attorney  
8 general shall assist with the preparation and filing  
9 of any petition brought pursuant to sections 334-123  
10 and 334-133, Hawaii Revised Statutes, and with the  
11 presentation of the case at any related court  
12 proceedings; provided further that if the petitioner  
13 is a private provider or other private individual, the  
14 petitioner may decline the assistance."

15 PART II

16 SECTION 6. The purpose of this part is to repeal language  
17 entitling the subject of a petition for assisted community  
18 treatment to legal representation by a public defender.

19 SECTION 7. Section 802-1, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) Any indigent person who is:



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 704-421, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~§~~704-421~~§~~] **Proceedings for defendants charged with**  
4 **petty misdemeanors not involving violence or attempted violence;**  
5 **criminal justice diversion program.** (1) In cases where the  
6 defendant is charged with a petty misdemeanor not involving  
7 violence or attempted violence, if, at the hearing held pursuant  
8 to section 704-404(2)(a) or at a further hearing held after the  
9 appointment of an examiner pursuant to section 704-404(2)(b),  
10 the court determines that the defendant is fit to proceed, then  
11 the proceedings against the defendant shall resume. In all  
12 other cases under this section where fitness remains an  
13 outstanding issue, the court shall continue the suspension of  
14 the proceedings and either commit the defendant to the custody  
15 of the director of health to be placed in a hospital or other  
16 suitable facility, including an outpatient facility, for further  
17 examination and assessment~~[+]~~ or, in cases where the defendant  
18 was not subject to an order of commitment to the director of  
19 health for the purpose of the fitness examination under section  
20 704-404(2), the court may order that the defendant remain  
21 released on conditions the court determines necessary for



1 placement in a group home, residence, or other facility  
2 prescribed by the director of health for further assessment by a  
3 clinical team pursuant to subsection (3).

4 (2) [~~Within seven days from the commitment of the~~  
5 ~~defendant to the custody of the director of health, or as soon~~  
6 ~~thereafter as is practicable, the director of health] In cases  
7 under this section where the defendant's fitness to proceed  
8 remains an outstanding issue at the hearing held pursuant to  
9 section 704-404(2)(a) or a further hearing held after the  
10 appointment of an examiner pursuant to section 704-404(2)(b), as  
11 applicable, the director of health, within fourteen days of that  
12 hearing or as soon thereafter as is practicable, shall report to  
13 the court on the following:~~

14 (a) The defendant's current capacity to understand the  
15 proceedings against the defendant and the defendant's  
16 current ability to assist in the defendant's own  
17 defense[-];

18 (b) Whether, after assessment of the defendant pursuant to  
19 subsection (3)(a) or (b), the defendant's clinical  
20 team believes that the defendant meets the criteria  
21 for involuntary hospitalization under section 334-60.2



1 or assisted community treatment under section 334-121;  
2 and  
3 (c) The date that the director of health filed a petition  
4 for involuntary hospitalization or assisted community  
5 treatment on behalf of the defendant pursuant to  
6 subsection (3) (a) or (b), as applicable.

7 If, following the report, the court finds the defendant fit to  
8 proceed, the proceedings against the defendant shall resume. In  
9 all other cases, the court shall dismiss the charge with or  
10 without prejudice in the interest of justice. [~~The director of~~  
11 ~~health may at any time proceed under the provisions of section~~  
12 ~~334-60.2 or 334-121.]~~

13 (3) During the defendant's commitment to the custody of  
14 the director of health or release on conditions pursuant to  
15 subsection (1):

16 (a) If the defendant's clinical team determines that the  
17 defendant meets the criteria for involuntary  
18 hospitalization set forth in section 334-60.2, the  
19 director of health, within seven days of the clinical  
20 team's determination, shall file with the family court  
21 a petition for involuntary hospitalization pursuant to



1 section 334-60.3. If the petition is granted, the  
2 defendant shall remain hospitalized for a period of  
3 time as provided by section 334-60.6; or

4 (b) If the defendant's clinical team determines that the  
5 defendant does not meet the criteria for involuntary  
6 hospitalization, or the court denies the petition for  
7 involuntary hospitalization, the defendant's clinical  
8 team shall determine whether an assisted community  
9 treatment plan is appropriate pursuant to part VIII of  
10 chapter 334. If the clinical team determines that an  
11 assisted community treatment plan is appropriate, the  
12 psychiatrist or advanced practice registered nurse  
13 from the clinical team shall prepare the certificate  
14 for assisted community treatment specified by section  
15 334-123, including a written treatment plan for the  
16 provision of mental health services to the defendant.  
17 The clinical team shall identify a community mental  
18 health outpatient program that agrees to provide  
19 mental health services to the defendant as the  
20 designated mental health program under the assisted  
21 community treatment order. The clinical team shall



1 provide the defendant with a copy of the certificate.  
2 Within ten days of provision of the certificate to the  
3 defendant by the clinical team, the director of health  
4 shall file with the family court the assisted  
5 community treatment petition described in section  
6 334-123. When a petition for assisted community  
7 treatment has been filed for a defendant, the  
8 defendant committed to the custody of the director of  
9 health shall remain in custody until the family court  
10 issues a decision on the petition; provided that the  
11 judge may order that the subject be released during  
12 the pendency of that action.

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

16 PART IV

17 SECTION 10. The purpose of this part is to authorize  
18 courts to require a probation violator to undergo a mental  
19 health evaluation and treatment program as a condition of  
20 continued probation whenever there is reason to believe that the



1 probation violation is associated with a mental disease,  
2 disorder, or defect of the defendant.

3 SECTION 11. Section 706-625, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§706-625 Revocation, modification of probation**

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

13 (2) The prosecuting attorney, the defendant's probation  
14 officer, and the defendant shall be notified by the movant in  
15 writing of the time, place, and date of any such hearing, and of  
16 the grounds upon which action under this section is proposed.  
17 The prosecuting attorney, the defendant's probation officer, and  
18 the defendant may appear in the hearing to oppose or support the  
19 application, and may submit evidence for the court's  
20 consideration. The defendant shall have the right to be  
21 represented by counsel. For purposes of this section, the court



1 shall not be bound by the Hawaii rules of evidence, except for  
2 the rules pertaining to privileges.

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

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

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

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

17 ~~(7)]~~ (6) The court may require a defendant to undergo and  
18 complete a substance abuse treatment program when the defendant  
19 has committed a violation of the terms and conditions of  
20 probation involving possession or use, not including to  
21 distribute or manufacture as defined in section 712-1240, of any



1 dangerous drug, detrimental drug, harmful drug, intoxicating  
2 compound, marijuana, or marijuana concentrate, as defined in  
3 section 712-1240, unlawful methamphetamine trafficking as  
4 provided in section 712-1240.6, or involving possession or use  
5 of drug paraphernalia under section 329-43.5. If the defendant  
6 fails to complete the substance abuse treatment program or the  
7 court determines that the defendant cannot benefit from any  
8 other suitable substance abuse treatment program, the defendant  
9 shall be subject to revocation of probation and incarceration.  
10 The court may require the defendant to:

11 (a) Be assessed by a certified substance abuse counselor  
12 for substance abuse dependency or abuse under the  
13 applicable Diagnostic and Statistical Manual and  
14 Addiction Severity Index;

15 (b) Present a proposal to receive substance abuse  
16 treatment in accordance with the treatment plan  
17 prepared by a certified substance abuse counselor  
18 through a substance abuse treatment program that  
19 includes an identified source of payment for the  
20 treatment program;



- 1 (c) Contribute to the cost of the substance abuse  
2 treatment program; and
- 3 (d) Comply with any other terms and conditions of  
4 probation.

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

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

15 (7) As a condition of continued probation, the court may  
16 require a defendant to undergo a mental health evaluation and  
17 treatment program when the defendant has committed a violation  
18 of the terms and conditions of probation and there is reason to  
19 believe that the violation is associated with a mental disease,  
20 disorder, or defect of the defendant. The court may require the  
21 defendant to:



1        (a) Be assessed for a mental disease, disorder, or defect  
2        by a psychiatrist or psychologist, who shall prepare  
3        an appropriate treatment plan;

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

9        (c) Contribute to the cost of the treatment program, as  
10       applicable; and

11       (d) Comply with any other terms and conditions of  
12       probation.

13       If the defendant fails to complete the treatment program or  
14       the court determines that the defendant cannot benefit from any  
15       other suitable treatment program, the defendant may be subject  
16       to revocation of probation and incarceration.

17       (8) Nothing in subsection (6) or (7) shall be construed to  
18       give rise to a cause of action against the State, a state  
19       employee, or a treatment provider.

20       (9) For the purposes of this section:





1 time for investigation of the matters at issue and for  
2 preparation, and shall be permitted to present the evidence that  
3 the attorney believes necessary for a proper disposition of the  
4 proceeding."

5 SECTION 13. Act 111, Session Laws of Hawaii 2017, is  
6 amended by amending section 8 to read as follows:

7 "SECTION 8. This Act shall take effect on July 1, 2017[  
8 ~~and shall be repealed on June 30, 2024; provided that subsection~~  
9 ~~(a) of section 334E-2, Hawaii Revised Statutes, as amended by~~  
10 ~~section 3 of this Act, shall be reenacted in the form in which~~  
11 ~~it read on June 30, 2017]."~~

12 PART VI

13 SECTION 14. If any provision of this Act, or the  
14 application thereof to any person or circumstance, is held  
15 invalid, the invalidity does not affect other provisions or  
16 applications of the Act that can be given effect without the  
17 invalid provision or application, and to this end the provisions  
18 of this Act are severable.

19 SECTION 15. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 16. This Act shall take effect upon its approval;  
2 provided that section 13 shall take effect on June 29, 2024.



**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. Part V: allows a court to appoint an attorney for the subject of a petition for assisted community treatment if the interests of justice require one be appointed and makes permanent the orders to treat over objection law in sections 334-161 and 334-162, HRS. (SD2)

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

