

ACT 93

H. B. NO. 997

A Bill for an Act Relating to Mental Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Sections 333-26, 333-27, 333-30, 333-31, 333-35, and 333-35.5, Hawaii Revised Statutes, are amended to read as follows:

“Sec. 333-26 Commitment of mentally retarded persons; application, certificate. The family court shall have jurisdiction to order commitments to Waimano training school and hospital and no person sought to be committed shall be entitled to a jury trial of the issues raised by any application for commitment. Any adult relative or the guardian or the custodian of the individual sought to be committed, or any authorized agent of an organization approved under sections 346-16 and 346-17 or of any governmental department or bureau, may file in the family court of the circuit in which the individual resides, or in the family court of the first circuit, an application for the commitment of the individual to Waimano training school and hospital. The application shall be verified and there shall be attached thereto a certificate executed and veri-

fied by the members of a committee consisting of a physician, a clinical psychologist, and a social worker, all qualified by professional training and experience to make the findings and diagnoses authorized in sections 333-24 and 333-25, certifying that the individual sought to be committed has been examined by the members of the committee and has been found to come within sections 333-24 and 333-25, and that the individual should be committed to Waimano training school and hospital. The examinations shall include the administration of psychological tests and psychological evaluations appropriate as an aid in the diagnosis of mental retardation and the certificate shall include the report of the result of the tests and evaluations as well as the statement of the facts which are alleged to bring the individual within section 333-24. Appropriate forms for the application, certificate, and statement hereinabove referred to shall be furnished by the department of health.

Sec. 333-27 Hearing of application; notice, duties of attorney general; appeal. The court shall, not less than ten days after the filing of the application, conduct a hearing thereon which shall be conducted in the presence of the person sought to be committed. A copy of the application together with notice of the time and place of the hearing thereon shall be personally served upon the person sought to be committed and upon any parent, guardian, or custodian who has not joined in the application, not less than ten days prior to the hearing. If personal service upon the parent, guardian, or custodian cannot be effected within the State, service may be made as provided in sections 634-59, 634-60, and 634-63, or 634-60.5, whichever is applicable.

At the request of the director of health or of any person authorized to file an application as hereinabove provided, the attorney general shall prepare, file, and present applications under this chapter, provided that, in the second and fifth circuits the respective county attorneys, and in the third circuit the corporation counsel, at the request of the attorney general shall prepare, file, and present such applications within their respective circuits.

Every order of commitment entered under this part prior to the procedures required of the director under section 333-30, and every final order of commitment entered under the section, shall contain a specific finding of the facts which bring the individual sought to be committed within this part. Any such order shall be subject to appeal, as set forth in section 641-2, by the individual sought to be committed, or by the guardian or custodian or any adult relative of the individual; provided, that unless specifically so ordered by the supreme court, no such appeal shall operate as a stay of the order of commitment, which shall be executed notwithstanding the appeal, subject to the release of the individual sought to be committed by order of the supreme court at any stage of the appeal.

Sec. 333-30 Observation and reexamination; certification; finality of order. No person committed to Waimano training school and hospital shall be detained therein for a period of more than sixty days unless, prior to the expiration of sixty days from the date of admission, or within such further period as may be allowed by the court, the director of health has caused the person to be observed and examined by one or more qualified physicians and clinical psychologists other than the signers of the certificate referred to in section 333-

26 and has filed in the court in which the application for commitment was filed a certificate signed by the examiners and setting forth the results of the observation and examination, and certifying that the person is in need of continued care, custody, and treatment in Waimano training school and hospital. Upon the filing of the certificate, the court may make a final order of commitment and the person shall thereafter remain at Waimano training school and hospital until discharged, conditionally released, granted leave, or transferred in accordance with this part; provided, that if the court is not satisfied that a final order of commitment should be entered on the basis of the certificate mentioned in this section, it may order a rehearing of the original application, upon the same terms and conditions as set forth in section 333-27 and may require such further examination and such further certificate as it may deem necessary in order to protect the rights of the alleged mentally retarded person, before entering the final order.

Sec. 333-31 Absolute discharge; conditional release; leave of absence; transfer. The director of health shall file in the proceeding in which the order of commitment was entered a verified petition for the absolute discharge of any committed person whom the director finds to be no longer within section 333-24. Such a finding may be made only upon the basis of a certificate executed and verified by the members of a committee constituted as provided in section 333-26, setting forth the opinion of the members of the committee, that the patient or ward no longer comes within section 333-24 and the reasons for the opinion. The petition shall include the finding and the certificate upon which the same is based. The court may require a hearing of the petition. Upon reading and filing the petition, or after a hearing thereof, the court may enter an order finding that the allegations of the petition are true and setting aside the order of commitment. Every patient or ward discharged as herein provided shall be provided with a copy of the order. Upon the discharge of any patient coming within section 333-29, at any time prior to the expiration of the period during which the patient could legally have been detained at the institution to which the patient was previously committed or sentenced, the patient shall be returned to the custody of the institution.

The director may grant a conditional release to any patient committed as hereinabove provided whom the director finds to be potentially capable of self-support and self-management in the community, or whom the director finds, as result of the availability of other care, does not, at the time of the finding require institutional care, supervision, control, treatment, and training at Waimano training school and hospital. The conditional release may involve, but shall not be limited to family or foster care or employment placements and shall be subject to such terms and conditions as may be imposed by the director. The conditional release may be terminated at any time upon the finding of the director that the continuation thereof will not serve the best interests of the ward or of his family or of the community. Every conditional release shall be reviewed annually by the director.

The director may grant to any patient a temporary leave of absence, upon such terms and conditions as he may deem advisable, in any case in which the director shall find that the leave will promote the best interests of

the patient. The temporary leave of absence shall not extend beyond a period of one hundred and twenty consecutive days. No conditional release or temporary leave of absence shall be granted to any patient coming within section 333-29 by reason of prior commitment to or imprisonment in a correctional institution prior to the expiration of the period during which the patient could legally have been detained at the institution to which the patient was previously committed or sentenced, unless the director shall find that the conduct of the patient within the Waimano training school and hospital is subversive to the maintenance of discipline and order therein, or is harmful to the program or to the other patients, in which event the director may grant the conditional release or temporary leave of absence and return the person to the correctional institution.

Sec. 333-35 Voluntary admission of minors. Upon the written application of a parent or guardian or other person or agency having legal custody, the director of health may permit the admission to Waimano training school and hospital of any minor who comes within sections 333-24 and 333-25, even though no application for commitment under this part has been filed; provided, that no such minor shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital. No minor admitted under this section shall be detained at the Waimano training school and hospital for a period of more than thirty days after a parent or guardian or any adult relative of the admitted minor shall have submitted to the director a written demand for release or discharge, unless an application for commitment under this part has been filed in a court having authority to order the commitment. The period of thirty days may be extended for not more than an additional thirty days by a court having jurisdiction to order commitments upon the court's finding that the extension is for the best interests of the minor. No such voluntary admission shall be permitted for any minor with respect to whom an application for commitment has previously been denied after presentation to a court having jurisdiction, without the specific written authorization of the court, which authorization may be made subject to such conditions as may be deemed by the court to promote the best interests of the minor.

Any court-appointed guardian of the person of a minor, before entering into any agreement with the director concerning the voluntary admission of the minor, shall report the plan to the court that appointed the guardian and shall thereafter be guided by the directions of the court.

No person admitted under this section shall be detained at the Waimano training school and hospital after the person has reached his eighteenth birthday unless, prior thereto, an application for commitment has been filed under this part.

Admission under this section shall be subject to such reasonable conditions and regulations as may be established by the director and any person or persons legally liable for the support of the minor may be required to pay to the Waimano training school and hospital such reasonable sums as may be determined by the directors as contributions towards the support, maintenance and treatment of the minor therein.

Sec. 333-35.5 Voluntary admission of adults. Upon the written applica-

tion of a parent or guardian or other person or agency having custody, the director of health may permit the voluntary admission to Waimano training school and hospital of any adult who comes within sections 333-24 and 333-25, and on whose behalf an application for commitment under this part has been filed; provided that no such adult shall be entitled as a matter of right to be admitted or to remain at the Waimano training school and hospital.

No adult admitted under this section shall be detained at the Waimano training school and hospital for a period of more than sixty days. The period of sixty days may be extended for not more than an additional thirty days by a court having jurisdiction to order commitments upon the court's finding that the extension is for the best interests of the adult.

Admission under this section shall be subject to such reasonable conditions and regulations as may be established by the director."

SECTION 2. Sections 334-1 and 334-83, Hawaii Revised Statutes, are amended to read as follows:

"Sec. 334-1 Definitions. As used in this chapter unless otherwise indicated by the context:

"Department" means the department of health.

"Director" means the director of health.

"Psychiatric facility" means a public or private hospital or part thereof which provides inpatient or outpatient care, custody, diagnosis, treatment, or rehabilitation services for mentally ill persons or for persons habituated to the excessive use of drugs or alcohol or intoxicated persons.

"Community mental health center" means one or more facilities which alone or in conjunction with other facilities, public or private, are part of a coordinated program providing a variety of mental health services principally for persons residing in a community or communities in or near which the center is located.

"Administrator" means the person in charge of a public or private hospital.

"Licensed physician" means a physician or surgeon licensed by the State to practice medicine, including a physician and surgeon granted a limited and temporary license under section 453-3(1), (2), and (5) or a resident physician and surgeon granted a limited and temporary license under paragraph (4) thereof, or a medical officer of the United States while in this State in the performance of his official duties.

"Mentally ill person" means a person having psychiatric disorder or other disease which substantially impairs his mental health.

"Person habituated to the excessive use of drugs or alcohol" means a person who repeatedly and compulsively uses narcotic, stimulant, depressant, or hallucinogenic drugs or alcohol to an extent which interferes with his personal, social, family, or economic life.

"Patient" means a person under observation, care, or treatment at a psychiatric facility.

"Admission procedures" mean the various methods for admission of mentally ill persons or of persons habituated to the excessive use of drugs or alcohol to public and private psychiatric facilities.

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“Authorized absence” means absence of a patient from a psychiatric facility for any period of time with permission.

“Unauthorized absence” means absence of a patient from a psychiatric facility for any period of time without permission.

“Discharge” means the formal termination on the records of a psychiatric facility of a patient’s period of treatment at the facility.

“Intoxicated person” means a person who is deprived of reasonable self-control because of intake of alcohol or because of any substance which includes in its composition volatile organic solvents.

Sec. 334-83 Hearing. The court may take testimony and may examine the patient, and after a full and complete hearing shall render a decision in writing, setting forth its findings of fact and conclusions of law. The court may award a fee to the guardian ad litem to be paid out of any property of the patient or funds of the court available therefor.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon approval on July 1, 1973.

(Approved May 15, 1973.)

*Edited accordingly.