

ACT 76

S.B. NO. 475

A Bill for an Act Relating to Mental Health.

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

SECTION 1. Section 334-1, Hawaii Revised Statutes, is amended by amending the definition of "Dangerous to property" to read:

"“Dangerous to property” means inflicting, attempting or threatening imminently to inflict damage to any property in a manner which constitutes a crime, as evidenced by a recent act, attempt or threat.”

SECTION 2. Section 334-21, Hawaii Revised Statutes, is amended to read:

“Sec. 334-21 Licensing of psychiatric facilities. No person, association, corporation, or government agency shall establish, maintain, or operate a psychiatric facility to which persons are involuntarily admitted without first obtaining a license therefor from the department of health. The license may be for a definite period and shall be subject to revocation as hereinafter provided. The issuance of a license shall be based upon an application which shall be in such form and shall contain such information as the department may require. The facility must be able to provide adequate care and treatment in conformance

with standards established by the department. The department may, at any and all times, examine and ascertain whether a licensed facility is being conducted in compliance with the license and applicable rules and regulations. Subject to chapter 91, the department may, if the interests of the public or of the patients of a facility so demand, for just and reasonable cause then appearing and to be stated in its order, amend or revoke a license by an order to take effect within such time as the department shall determine. This section shall not apply to any facility operated by the United States or any agency thereof."

SECTION 3. Section 334- of Section 4, Act 130, Session Laws of Hawaii 1976, is amended to read:

"Sec. 334- Emergency examination and hospitalization. (a) Initiation of proceeding. An emergency admission may be initiated as follows:

- (1) A police officer may take into custody and transport to any facility designated by the director any person who he has probable cause to believe is committing an offense due to apparent mental illness or substance abuse and appears to be imminently dangerous to property, to self or to others. A police officer may also take into custody and transport to any facility designated by the director any person threatening or attempting suicide. The officer shall make application for the examination, observation and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to some physician at the facility.
- (2) Upon written or oral application of any licensed physician, attorney, member of the clergy, health or social service professional or any state or county employee in the course of his employment, a judge may issue an ex parte order orally, but shall reduce said order to writing by the close of the next day following the application, stating that there is probable cause to believe a person is mentally ill or suffering from substance abuse and is imminently dangerous to self, to others, or to property and in need of care and/or treatment, giving the findings on which the conclusion is based and directing that a police officer or other suitable individual take the person into custody and delivery him to the nearest facility designated by the director for emergency examination and treatment. The ex parte order shall be made a part of the patient's clinical record. If the application is oral, the person making the application shall reduce said application to writing and shall submit same by noon of the next court day to the judges who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.
- (3) Any licensed physician who has examined a person and has reason to believe the person is (a) mentally ill or suffering from substance abuse, and (b) is imminently dangerous to self, to others, or to property, and (c) is in need of care and/or treatment, may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for

further evaluation and possible emergency hospitalization and may administer such treatment as is medically necessary for the person's safe transportation.

(b) Emergency examination. A patient who is delivered for emergency examination and treatment to a facility designated by the director shall be examined by a licensed physician without unnecessary delay, and may be given such treatment as is indicated by good medical practice.

(c) Release from emergency examination. If the physician who performs the emergency examination concludes that the patient need not be hospitalized, the patient shall be discharged immediately unless the patient is under criminal charges, in which case he shall be returned to the custody of a law enforcement officer.

(d) Emergency hospitalization. If the physician who performs the emergency examination has reason to believe that the patient is (1) mentally ill or suffering from substance abuse, and (2) is imminently dangerous to self, to others, or to property, and (3) is in need of care and/or treatment, the physician may hospitalize him on an emergency basis and/or cause the patient to be transferred to another psychiatric facility for emergency hospitalization. The patient shall have the right immediately upon admission to telephone his guardian or a member of his family or an adult friend and his attorney. If the patient declines to exercise his right, the staff of the facility shall inform an adult patient of his right to waive notification to his family and shall make reasonable efforts to ensure that the patient's guardian or family is notified of the emergency admission but the patient's family need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with his attorney in private.

(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge him. If the patient is under criminal charges, he shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of his admission, unless the patient voluntarily agrees to further hospitalization, or a proceeding for a court-ordered evaluation and/or hospitalization is initiated as provided in section 334- (b)(2). If that time expires on a Saturday, Sunday or holiday, the time for initiation is extended to noon of the next court day. Upon initiation of the proceedings the facility shall be authorized to detain the patient until further order of the court."

"Sec. 334- Admission for nonemergency treatment or supervision.

(a) Voluntary admission.

- (1) Acceptance for voluntary inpatient treatment at a psychiatric facility shall be in accordance with usual standards for hospital admissions.
- (2) A facility may admit for evaluation, diagnosis, or treatment any individual under fifteen years of age for whom application is made by his parent or guardian. If application for admission is countersigned by a minor aged fifteen through seventeen years before a family court officer, no hearing shall be necessary. If he elects not to sign, involun-

tary hospitalization proceedings shall be initiated.

- (3) A facility shall discharge a voluntary patient who has sufficiently improved so that hospitalization is no longer desirable. A voluntary patient or his guardian, representative, or attorney may request discharge in writing at any time following admission to the facility. If discharge would be dangerous to the patient or others, proceedings for involuntary hospitalization must be initiated as soon as possible but within twenty-four hours of the receipt by the administrator of the written request for discharge. If that time expires on a Saturday, Sunday or holiday, the time for initiation is extended to noon of the next court day. Upon the initiation of the proceedings, the facility is authorized to detain the patient until further order of the court. If the patient was admitted on his own application and the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the agreement of the patient.
- (4) Notice of right to release. At the time of his admission and each six months thereafter, a voluntary patient and his guardian or representatives shall be notified in writing of his right and how to apply for a discharge.
- (b) Involuntary hospitalization.
 - (1) Criteria. A person may be committed to psychiatric facility for involuntary hospitalization if the court finds:
 - (A) That the person is mentally ill or suffering from substance abuse, and
 - (B) That he is dangerous to himself or others or to property, and
 - (C) That he is in need of care and/or treatment, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization.
 - (2) Initiation of proceeding. Court-ordered commitment to a psychiatric facility may be initiated as follows:
 - (A) Any person may file a petition alleging that a person located in the county meets the criteria for commitment to a psychiatric facility. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public. The attorney general, his deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the signs and symptoms relied upon by the physician to determine the person is in need of care and/or treatment and whether or not he is capable of realizing and making a rational decision with respect to his need for treatment. If the petitioner believes that further evaluation is necessary before commitment, the petitioner

may request such further evaluation.

- (B) In the event the subject of the petition has been given an examination, evaluation or treatment in a psychiatric facility within five days before submission of the petition, and hospitalization is recommended by the staff of the facility, the petition may be accompanied by the administrator's certificate in lieu of a physician's certificate.
- (3) Notice; waiver of notice; hearing on petition; waiver of hearing on petition.
 - (A) The court shall set a hearing on the petition and notice of the time and place of such hearing shall be served in accordance with, and to those persons specified in, a current order of commitment. If there is not current order of commitment, notice of the hearing shall be served personally on the subject of the petition and served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on the subject's spouse, legal parents, adult children and legal guardian, if one has been appointed. If the subject of the petition has no living spouse, legal parent and adult children, or if none can be found, notice of the hearing shall be served on at least one of his closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, attorney for the subject of the petition or other court-appointed attorney as the case may be. If the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if such person can be found within the state. Notice shall also be given to such other persons as the court may designate.
 - (B) The notice shall include the following:
 - (i) The date, time, place of hearing, a clear statement of the purpose of the proceedings and of possible consequences to the subject; and a statement of the legal standard upon which commitment is authorized;
 - (ii) A copy of the petition;
 - (iii) A written notice, in plain and simple language, that the subject may waive such a hearing by voluntarily agreeing to hospitalization, or with the approval of the court, to some other form of treatment;
 - (iv) A filled-out form indicating such waiver;
 - (v) A written notice, in plain and simple language, that the subject or his guardian or representative may apply at any time for a hearing on the issue of the subject's need for hospitalization, if he has previously waived such a hearing;
 - (vi) Notice that the subject is entitled to the assistance of an attorney and that the public defender has been notified of these proceedings;
 - (vii) Notice that if the subject does not want to be represented by

the public defender he may contact his own attorney;

- (C) If the subject executes and files a waiver of the hearing, upon acceptance by the court following a court determination that the person understands his right and is competent to waive them, the court shall order the subject to be committed to a facility that has agreed to admit the subject as an involuntary patient or, if he is at such a facility, that he be retained there.
- (4) Hearing on petition.
 - (A) The court may adjourn or continue a hearing for failure to timely notify a spouse, guardian, relative or other person determined by the court to be entitled to notice.
 - (B) The time and form of the procedure incident to hearing the issues in the petition shall be provided by court rule. Unless the hearing is waived, the judge shall hear the petition as soon as possible and no later than ten days after the date the petition is filed unless a reasonable delay is sought for good cause shown by the subject of the petition, his attorney, or those persons entitled to receive notice of the hearing under subsection (b)(3).
 - (C) The subject of the petition shall be present at all hearings unless he waives his right to be present, is unable to attend or creates conditions which make it impossible to conduct the hearing in a reasonable manner as determined by the judge. A waiver is valid only upon acceptance by the court following a judicial determination that the person understands his rights and is competent to waive them or is unable to participate. If the subject is unable to participate, the judge shall appoint a temporary guardian as provided in Article V, Uniform Probate Code, to represent him throughout the proceeding.
 - (D) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested person, or the court on its own motion may request a hearing in another circuit because of convenience to the parties, witnesses, or the court or because of the individual's mental or physical condition.
 - (E) The attorney general, his deputy, special deputy, or appointee shall present the case for hearings convened under this chapter, except that the attorney general, his deputy, special deputy, or appointee need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for involuntary hospitalization.
 - (F) Counsel for the subject of the petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to inpatient hospitalization.
 - (G) No individual may be found to require medical treatment unless at least one physician who has personally examined him testifies in

person at the hearing. This testimony may be waived by the subject of the petition. If the subject of the petition has refused to be examined by a licensed physician, he may be examined by a court-appointed licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true, the court may make a temporary order committing him to a psychiatric facility for a period of, not more than five days for the purpose of a diagnostic examination and evaluation. The subject's refusal shall be treated as a denial that he is mentally ill or suffering from substance abuse. Nothing herein, however, shall limit the individual's privilege against self-incrimination.

- (H) The subject of the petition in a hearing under this section has the right to secure an independent medical evaluation and present evidence thereon.
 - (I) If after hearing all relevant evidence, including the result of any diagnostic examination ordered by the court, the court finds that an individual is not a person requiring medical, psychiatric, or other rehabilitative treatment or supervision, the court shall order that he be discharged if he has been hospitalized prior to the hearing. If the court finds beyond a reasonable doubt that the criteria for involuntary hospitalization has been met, the court may issue an order to any police officer to deliver the subject to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. An order of commitment shall specify which of those persons served with notice pursuant to subsection (b) (3), together with such other persons as the court may designate, shall be entitled to receive any subsequent notice of intent to discharge, transfer, or recommit.
 - (J) The court may find that the subject of the petition is an incapacitated and/or protected person under Article V, Uniform Probate Code, and may appoint a guardian of the person and/or property for the subject under the terms and conditions as the court shall determine.
- (5) Period of detention. The psychiatric facility may detain a subject for a period of time ordered by the court not to exceed ninety days from date of admission unless sooner discharged by the facility pursuant to section 334-76 or section 334-74. At the end of the ninety-day period he shall be discharged automatically except as provided in sections 704-406, 704-411, and 706-607, Hawaii Penal Code, unless before expiration of the period and by a proceeding initiated pursuant to this section the facility obtains a court order for his recommitment. Recommitment for a period not to exceed ninety days may not be ordered unless the court determines that the criteria for involuntary hospitalization set forth in subsection (b) (1) continue to exist. If at the end of a

recommitment period the court finds that the criteria for involuntary hospitalization set forth in subsection (b) (1) continue to exist and are likely to continue beyond ninety days, the court may order recommitment for a period not to exceed 180 days.

- (6) Notice of intent to discharge. When the administrator of a psychiatric facility contemplates discharge of an involuntary patient because of expiration of the court order for commitment or because the patient is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization at subsection (b) (1), he shall provide notice of intent to discharge. The notice shall be filed with the court and served personally or by certified mail on those persons which the order of commitment specifies as entitled to receive notice. If no objection is filed within three days of service, the court shall enter an order of discharge. If any person specified as entitled to receive notice files a written objection to discharge, the court shall conduct a hearing prior to issuing an order of discharge."

"Sec. 334- Presumption; civil rights. No presumption of insanity or legal incompetency shall exist with respect to any patient by reason of his admission to a psychiatric facility under this chapter. The fact of the admission shall not in itself modify or vary any civil right of any such person, including but not limited to civil service statutes or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law, or the right to dispose of property, execute instruments, make purchases, enter into contractual relationships and to vote. If the administrator of a psychiatric facility or his deputy is of the opinion that a patient should not exercise any civil right, application for a show cause order shall be made to the court under the above proceedings after notice pursuant to section 334- (b)(3)."

"Sec. 334- Service of process and papers upon patients. (a) Service of process and papers upon a patient in a psychiatric facility or a patient on authorized or unauthorized absence from a psychiatric facility shall be made in the following manner:

- (1) Service of process and papers relating to the involuntary hospitalization of the patient shall be made directly and personally upon the patient and shall also be made personally or by certified mail upon his guardians and the public defender, his attorney or court-appointed attorney; otherwise, service upon the patient shall be incomplete. A copy of the legal process or paper served on a patient under this paragraph shall be given to the administrator of the psychiatric facility or his deputy and shall be filed with the records of the patient.
- (2) Service of process and papers not relating to the involuntary hospitalization of the patient shall be made directly and personally upon the patient, his guardians, and the administrator of the psychiatric facility or his deputy; otherwise, service upon the patient shall be incomplete and shall not give the issuing court or agency jurisdiction over the person of the patient. A legal process or paper served under this paragraph shall be filed with the records of the patient, and the administra-

tor of the psychiatric facility or his deputy shall immediately inform the court or other agency out of which the process or paper issued, in writing, of the date of service and of the mental and physical condition of the patient.

(b) Neither the administrator nor anyone connected with a psychiatric facility shall accept service of process or papers on behalf of a patient."

SECTION 4. Section 334-71, Hawaii Revised Statutes is amended to read:

"Sec. 334-71 Transfer of patients between facilities. A patient at a psychiatric facility, including those held on court order, may be transferred to another psychiatric facility when the administrator of the sending facility determines that it would be in the best interests of the patient that the patient be transferred and the administrator of the receiving facility agrees to accept the patient; provided that prior notice of such transfer be given to the subject of such transfer and to those persons specified in a current order of commitment. If there is no current order of commitment, notice shall be given to those persons enumerated in section 334- (b)(3)."

SECTION 5. Section 334-74, Hawaii Revised Statutes, is amended to read:

"Sec. 334-74 Transfer of residents of correctional facilities. If any resident of a state correctional facility is in need of hospital treatment for mental illness or substance abuse, the director of social services and housing or the officer in charge of the correctional facility may file with the director of health an application for the transfer of the resident to the state hospital, together with the certificate of a psychiatrist employed by the department of health showing the need for such hospital treatment, and, upon approval of the application by the director of health, the official having custody of the resident shall transfer the resident to the state hospital for care and treatment. The official effecting the transfer of the resident shall keep the administrator of the state hospital informed of the maximum period of commitment of the resident to the director of social services and housing, and, if the continued hospitalization of the resident beyond the expiration of the period is deemed necessary, the administrator of the state hospital shall institute the admission procedures required to detain the resident as a patient notwithstanding the resident's release from the state correctional facility; provided that a judicial hearing pursuant to section 334- (b) be held by the same circuit court that sentenced such resident. In the event that discharge from the hospital occurs before the expiration of the maximum period of commitment or confinement, the resident shall be returned to the appropriate state correctional facility. As used in this section, "resident" means any person serving a sentence in a state correctional facility or any child or minor detained in a state correctional facility."

SECTION 6. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to read:

"Sec. 334-76 Discharge from custody. Subject to any special requirements of law as provided in sections 704-406, 704-411 and 706-607 or elsewhere, with respect to patients committed on court order, the administrator of a psychiatric facility shall, pursuant to section 334- (b)(6), send a notice of intent to discharge

to those persons specified in the order of commitment as entitled to receive notice of intent to discharge and the administrator or his deputy or the physician assuming medical responsibility for the patient, shall discharge an involuntary patient when he is no longer a proper subject for commitment, as determined by the criteria for involuntary hospitalization at section 334- (b)(1)."

SECTION 7. Section 334-81, Hawaii Revised Statutes, is amended to read:

"Sec. 334-81 Request for hearing. At any time after the admission of a patient to a psychiatric facility under Part IV of this chapter or after the transfer of a patient to another psychiatric facility under section 334-71, he or, on his behalf, any member of his family, relative, friend, or responsible person, may obtain a judicial determination of the regularity of his admission or of the need for his continued hospitalization by filing a written request therefor in the family court of the circuit in which the psychiatric facility is located. The form of the request shall be prescribed and supplied free of charge by the court, and the proceedings in connection therewith shall be styled "In the Interest of (the named patient)." The administrator of the psychiatric facility shall assist the patient in obtaining legal counsel if the patient objects to his admission or continued hospitalization."

SECTION 8. The provisions of this Act are severable; if any provision or application of this Act is held invalid, such invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application.

SECTION 9. 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 10. This Act shall take effect upon its approval.

(Approved May 12, 1977.)

*Edited accordingly.