

ACT 113

H.B. NO. 2826-82

A Bill for an Act Relating to Waimano Training School and Hospital.

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

SECTION 1. Chapter 333, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . WAIMANO TRAINING SCHOOL AND HOSPITAL

§333- Program; coordination and supervision. The department of health

shall coordinate and supervise a mental retardation program in the State which shall consist of community clinical services, Waimano training school and hospital, and protective services. The director of health, hereinafter referred to as "director," shall be responsible for the administration of the program.

§333- Waimano training school and hospital. There shall be in the State an institution known as "Waimano training school and hospital" for persons who because of mental retardation are incapable of independent self-support and self-management in the community or incapable of attaining independent self-support and self-management without proper treatment and training.

§333- Rules. The director may prescribe, subject to the applicable provisions of chapter 91, rules necessary for the implementation of this part.

§333- Persons incapable of independent self-support and self-management. (a) Except as provided in this section, no person shall be admitted to Waimano training school and hospital.

(b) Any person who is found to be incapable of independent self-support and self-management in the community or to be incapable of attaining independent self-support and self-management without proper treatment and training, and who is found to require institutional care, supervision, control, treatment, and training for his own welfare and who is found to be mentally retarded as set forth in section 333- may be voluntarily admitted to Waimano training school and hospital.

(c) If the person is a minor, the director may permit the admission of the minor to Waimano training school and hospital upon the written application of a parent, guardian, or other person or agency having legal custody; provided that no minor shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital.

(d) If the person is an adult, the director may permit the admission of the adult to Waimano training school and hospital upon the written application of a court appointed guardian of his person if the guardian is specifically authorized to make such application in the court order appointing the guardian or any other order issued by the family court; provided that no adult shall be entitled as a matter of right either to be admitted or to remain at the Waimano training school and hospital.

§333- Mentally retarded persons. Mentally retarded persons, as referred to in this part are persons:

(1) Who are afflicted with:

(A) A deficiency of general mental development associated with chronic brain syndrome, or

(B) A deficiency of intelligence arising after birth, due to infection, trauma, or other disease process, or

(2) Who are afflicted with general intellectual subnormality not due to known organic factors.

§333- Procedure for review of application for admission. Upon receipt of an application for admission of any person to Waimano training school and hospital, the director shall cause the person to be observed and examined by 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 diagnosis required in sections 333- and 333- to determine if admission to Waimano train-

ing school and hospital is proper and if the person is in need of care or treatment at the hospital. The examination shall include the administration of psychological tests and psychological evaluations as an aid in the diagnosis of mental retardation and the certificate shall include the report of the results of the tests and evaluations as well as the statement of facts which are relied on in making the certification. If the committee certifies that admission is proper under sections 333- and 333- , and that the person is in need of care or treatment at Waimano training school and hospital, the director may cause the person to be admitted to Waimano training school and hospital if he determines that there is no suitable alternative available which would be less restrictive than admission.

§333- Director as guardian. (a) Notwithstanding any law to the contrary the family court may appoint the director as guardian of the person of any person if the court finds that:

- (1) The person is incapacitated as defined in section 560:5-101(2);
- (2) The person is mentally retarded;
- (3) The person may be reasonably expected to need treatment or care at Waimano training school and hospital or both; and
- (4) There is no other suitable guardian able or willing to serve as guardian of the person.

(b) The director, if so appointed, shall have all the powers and duties of a guardian of the person duly appointed by the court; provided that he shall not be liable in damages for any tortious act committed by the person.

§333- Periodic review. The director shall cause any person admitted to Waimano training school and hospital to be reexamined by a committee on the same terms and conditions as required in section 333- at least annually. Following such reexamination, the director shall discharge such persons from Waimano training school and hospital unless (1) the committee certifies that continuing admission is proper under sections 333- and 333- and that the person is in need of care or treatment at Waimano training school and hospital, and (2) the director redetermines that there is no suitable alternative available which would be less restrictive than admission.

§333- Payments for care and treatment of persons committed; liability of persons admitted. A parent, guardian of the property, or other person liable for the support of any person admitted to the Waimano training school and hospital shall pay such sums as may be determined by the department of health for the care and treatment of the person. The parent or guardian of the property of a minor admitted to the Waimano training school and hospital shall be liable for such care and treatment until the person admitted has reached the age of majority. The liability of a guardian of the property of a person under this section shall be limited to the estate of the ward and shall not be satisfied out of the individual assets of the guardian. Every person admitted to the Waimano training school and hospital and any property of his or his estate not exempt from execution, shall be liable for the expense of his care and treatment. The attorney general, whenever requested by the director, shall take such steps as may be appropriate, by suit if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in his behalf in any enforcement proceeding.

The department of health may, with the approval of the governor and from

the funds appropriated to the department for the care and treatment of mentally retarded persons, transfer from time to time to the department of social services and housing such amounts as may be requested by the department of social services and housing to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person admitted to the Waimano training school and hospital. The department of health may, with the approval of the governor, deposit any portion of the payments received by it into the appropriation from which the transfers were made.

§333- Earnings and income of patients and wards. The director shall prescribe, subject to chapter 91, rules necessary for the collection, conservation, and disposition of earnings or income of any person admitted to Waimano training school and hospital which are not subject to the control of a court appointed guardian of the estate of the patient or ward, upon such terms and conditions as the director may deem advisable.

§333- Compensation for labor by persons admitted to Waimano training school and hospital. Any person admitted to Waimano training school and hospital performing services for Waimano training school and hospital may be allowed compensation for the services, as shall be determined by the director. No person shall, because of his services for Waimano training school and hospital, be deemed to be an employee of the State."

SECTION 2. Persons committed to Waimano training school and hospital prior to the effective date of this Act shall remain wards of the director and he is hereby granted the power to voluntarily admit such persons to Waimano training school and hospital. These persons shall be deemed to have met the criteria for admission under section 1 of this Act. Any parent or other interested person may petition the family court for removal of the director as guardian of the person of any person committed to Waimano training school and hospital on the effective date of this Act, under the provisions of section 560:5-307, Hawaii Revised Statutes.

SECTION 3. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§560- Special powers and duties of guardian of the person. If the family court finds the ward is mentally retarded as defined in section 333- , and is in need of institutional care, supervision, control or treatment, and is incapable of independent support and self-management in the community, the court may grant the guardian of the person the power to voluntarily admit the person to Waimano training school and hospital under section 333- . If such power is granted to the guardian of the person, it must be so stated in the court's order."

SECTION 4. Part III, chapter 333, Hawaii Revised Statutes, is repealed.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 24, 1982.)

Notes

1. Edited pursuant to HRS §23G-16.5.