

ACT 173

S.B. NO. 631

A Bill for an Act Relating to Involuntary Civil Commitment Under Mental Health Law. Admissions for Nonemergency Treatment or Supervision.

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

SECTION 1. Section 334-60, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Involuntary hospitalization:

- (1) Criteria. A person may be committed to a 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 imminently dangerous to himself or others [or to property], and
 - (C) That he is in need of care [and/or] or treatment, or both, 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] or treatment, or both, 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 no 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)] (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[.];
 - (viii) Notice, if such be the case, that the petitioner intends to adduce evidence to show that the subject of the petition is an incapacitated or protected person, or both, under Article V of chapter 560, and whether or not appointment of a guardian of the person is sought at the hearing. If appointment of a guardian of the person is to be recommended, and a nominee is known at the time the petition is filed, the identity of the nominee shall be disclosed.
- (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 rights 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).] paragraph (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 of chapter 560, to represent him throughout the proceedings.

- (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 the 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 under paragraph (1)(A) has been met[,]

beyond a reasonable doubt and that the criteria under paragraphs (1)(B) and (1)(C) have been met by clear and convincing evidence, 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),] paragraph (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] or protected person, or both, under Article V of chapter 560, and may appoint a guardian of the person [and/or], or property, or both, 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 the 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, 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)] paragraph (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)] paragraph (1) continue to exist and are likely to continue beyond ninety days, the court may order recommitment for a period not to exceed [180] one hundred eighty 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 in [subsection (b) (1),] paragraph (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.] administrator of the psychiatric facility shall discharge the patient. 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.] to

determine if the patient still meets the criteria for involuntary hospitalization in paragraph (1). If the court finds that the patient does not meet the criteria for involuntary hospitalization in paragraph (1), the court shall issue an order of discharge. If the court finds that the patient does meet the criteria for involuntary hospitalization in paragraph (1), the court shall issue an order denying discharge."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1983.)