

A Bill for an Act Relating Mental Health.

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

SECTION 1. Chapter 334, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . INVOLUNTARY OUTPATIENT TREATMENT

§334- Criteria for involuntary outpatient treatment. A person may be ordered to obtain involuntary outpatient treatment if the family court finds that:

- (1) The person is suffering from a severe mental disorder or from substance abuse; and
- (2) The person is capable of surviving safely in the community with available supervision from family, friends, or others; and
- (3) The person, at some time in the past: (a) has received inpatient hospital treatment for a severe mental disorder or substance abuse, or (b) has been imminently dangerous to self or others as a result of a severe mental disorder or substance abuse; and
- (4) The person, based on the person’s treatment history and current behavior, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others; and
- (5) The person’s current mental status or the nature of the person’s disorder limits or negates the person’s ability to make an informed decision to voluntarily seek or comply with recommended treatment; and
- (6) There is a reasonable prospect that the outpatient treatment ordered will be beneficial to the person.

§334- Definitions. For the purposes of this part:

“Outpatient treatment” includes medication specifically authorized by court order; individual or group therapy; day or partial day programming activities; services and training, including educational and vocational activities; supervision of living arrangements; and any other services prescribed to either alleviate the person’s disorder or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for hospitalization.

“Outpatient treatment psychiatrist” means the psychiatrist who is responsible for the management and supervision of a person’s outpatient treatment under order of the court.

“Subject of the order” means a person who has been ordered by the court to obtain outpatient treatment.

“Subject of the petition” means the person who, under a petition filed under section 334- , is alleged to meet the criteria for involuntary outpatient treatment.

§334- Petition. (a) Any person may file a petition with the family court alleging that another person meets the criteria for involuntary outpatient treatment. The petition shall state:

- (1) Each of the criteria numbered (1) through (6) for involuntary outpatient treatment, as set out in section 334- ;
- (2) Petitioner’s good faith belief that the subject of the petition meets each of criteria numbered (1) through (4);
- (3) Facts which support petitioner’s good faith belief that the subject of the petition meets each of the criteria numbered (1) through (4), provided that the hearing on the petition need not be limited to the stated facts; and
- (4) That the subject of the petition is present within the county where the petition is filed.

The petition shall be executed subject to the penalties of perjury. The petition need not express any belief, or state any supporting facts, with reference to criteria (5) and (6), but all six criteria will be addressed at the hearing.

(b) The petition may, but need not, be accompanied by any statement of a licensed psychiatrist or other mental health professional who has examined the subject of the petition at any time prior to the submission of the petition.

(c) If the subject of the petition has refused to submit to examination by a licensed psychiatrist, the fact of the refusal shall be alleged in the petition.

§334- Hearing date. The family court shall set a hearing date on a petition as soon as possible, but within ten days after filing of the petition.

§334- Notice. (a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules; and
 - (2) Delivered personally or mailed by certified or registered mail, return receipt requested, deliverable to addressee only, to as many as are known to the petitioner of the subject’s spouse, legal parents, adult children, and legal guardian, if one has been appointed. Petitioner shall certify that such notices have been mailed, and to whom, but proof of receipt of such notices is not required. Notice shall also be served on any other person that the court designates.
- (b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the hearing and possible consequences to the subject, and a statement of the legal standard upon which involuntary outpatient treatment is authorized;
- (2) A copy of the petition; and

- (3) Notice that the subject of the petition is entitled to be represented by an attorney, and that the court will appoint a public defender or other attorney for the subject if the subject desires one and is indigent.

(c) The family court may continue a hearing for failure to timely notify a person entitled to be notified.

§334- Hearing. (a) The time and form of the procedure incident to hearing the issues in the petition shall be provided by family court rule and consistent with this part.

(b) The hearing may be held at any convenient place within the circuit. The subject of the petition, any interested person, or the family court upon its own motion may request a hearing in another court because of inconvenience to the parties, witnesses, or the family court or because of the subject's physical or mental condition.

(c) The hearing shall be closed to the public, unless the subject of the petition requests otherwise.

(d) The subject of the petition shall be present at the hearing. However, if the subject has been served with the petition and does not appear at the hearing, the court, in its discretion, may go forward with the hearing.

(e) The subject of the petition need not, but may, be represented by an attorney. If the subject desires an attorney and is indigent, or if the family court determines that the legal or factual issues raised are of such complexity that the assistance of an attorney is necessary for an adequate presentation of the merits or that the subject of the petition is unable to speak for the subject's self, the family court shall order the appointment of a public defender or other attorney to represent the subject and continue the hearing for not more than five days.

(f) If the subject of the petition is represented by an attorney, the attorney shall be allowed adequate time for investigation of the matters at issue and preparation. The attorney shall be permitted to present evidence believed necessary for proper disposition of the proceeding.

(g) No subject of the petition shall be ordered to receive involuntary outpatient treatment unless at least one psychiatrist testifies in person at the hearing who has personally examined the subject within the time period commencing five calendar days before the filing of the petition and ending at the time of the psychiatrist's testimony. The psychiatrist's testimony shall state the facts which support the allegation that the subject meets all the criteria for involuntary outpatient treatment, the recommended outpatient treatment, and the rationale for the recommended outpatient treatment.

If the recommended outpatient treatment includes medication, the psychiatrist's testimony shall describe the types or classes of medication(s) which should be authorized, and describe the physical and mental beneficial and detrimental effects of such medication(s).

If the subject of the petition has refused to be examined by a licensed psychiatrist, the family court may request the subject to consent to examination by a psychiatrist appointed by the court or employed at a community mental health center. If the subject of the petition does not consent and the family court finds sufficient evidence to believe that the allegations in the petition are true, the family court may order the commitment of the subject to a psychiatric facility for examination. The commitment shall not be for more than twenty-four hours. The examining psychiatrist shall submit the findings and recommendations to the family court.

The subject of the petition's refusal to submit voluntarily to examination shall be treated as a denial that the subject is suffering from a severe mental disorder or substance abuse, and a denial that the subject otherwise fits within the criteria for a court order of involuntary outpatient treatment.

Nothing herein shall be construed in a way that limits the subject of the petition's privilege against self-incrimination.

(h) The subject of the petition may secure one or more psychiatric examinations and present the findings as evidence at the hearing. The subject shall be entitled to a psychiatric examination at a community mental health center if the subject so desires, and if an examination has not already been conducted at a community mental health center which will lead to psychiatric testimony at the hearing.

§334- Disposition. (a) If after hearing all relevant evidence, including the results of an examination ordered by the family court, the family court finds that the subject of the petition does not meet the criteria for involuntary outpatient treatment, the family court shall dismiss the petition.

(b) If after hearing all relevant evidence, including the results of an examination ordered by the family court, the family court finds by clear and convincing evidence that the subject of the petition meets the criteria for involuntary outpatient treatment, the family court shall order the subject to obtain outpatient treatment for a period of not more than 180 days. The order shall also state the outpatient treatment which the subject is to obtain.

If the court finds by clear and convincing evidence that the beneficial mental and physical effects of recommended medication(s) outweigh the detrimental mental and physical effects, if any, the order may authorize types or classes of medication(s) to be included in outpatient treatment in the discretion of the outpatient treatment psychiatrist.

The court order shall also state who should receive notice of intent to early discharge in the event that the outpatient treatment psychiatrist determines, prior to the end of the court ordered period of treatment, that the subject should be early discharged from outpatient involuntary treatment.

(c) The family court shall also designate on the order the outpatient treatment psychiatrist who is to be responsible for the management and

supervision of the subject's outpatient treatment, or shall designate an administrator of a community mental health center to, in turn, designate such an outpatient treatment psychiatrist during the treatment period without court approval, and may designate either a publicly employed psychiatrist, or a private psychiatrist, provided that the private psychiatrist shall agree to the designation.

§334- Treatment costs and fees. Private treatment pursuant to the court order shall be at the expense of the subject of the petition, except to the extent such charges are covered by other laws or programs. Treatment through a community mental health center shall be pursuant to its fee schedules; however, the subject of the order shall not be denied treatment by a community mental health center for failure to pay such fees.

§334- Failure to comply with outpatient treatment. (a) An outpatient treatment psychiatrist may prescribe or administer to the subject of the order reasonable and appropriate medication, if specifically authorized by the court order, and treatment which is consistent with accepted medical standards and the family court order.

(b) No subject of the order shall be physically forced to take medication or forcibly detained for treatment under a family court order for involuntary outpatient treatment.

(c) The outpatient treatment psychiatrist or psychiatrist's designee shall make all reasonable efforts to solicit the subject's compliance with the prescribed treatment. If the subject fails or refuses to comply after the efforts to solicit compliance, the outpatient treatment psychiatrist shall so notify the court and may submit a petition under part IV for the involuntary hospitalization of the subject, provided that the refusal of treatment shall not constitute evidence toward any of the criteria for involuntary hospitalization.

§334- Discharge. An outpatient is automatically and fully discharged at the end of the family court ordered period of outpatient treatment, a period of not more than 180 days, unless a new family court order has been obtained as provided hereinbelow.

§334- Early discharge. An outpatient treatment psychiatrist shall commence the early discharge procedure for a subject of the order if the outpatient treatment psychiatrist finds that the subject no longer meets the criteria for involuntary outpatient treatment.

The outpatient treatment psychiatrist shall send to the clerk of the family court which issued the order for involuntary outpatient treatment, notification that in the psychiatrist's opinion the subject of the order should be discharged prior to the end of the period specified in the court order.

The clerk of the court shall then prepare and mail to the persons whom the family court order specified are entitled thereto, a notice of intent of early discharge. The notice of intent of early discharge shall be mailed at least five days prior to the intended date of discharge.

(b) If no objection is filed under section 334- within five days of the mailing of notice, the family court shall enter an order of discharge, and subject of the order is thereupon fully discharged from involuntary outpatient treatment and the clerk of the family court shall promptly so notify the subject of the order.

§334- Objection to discharge. Any person who has received a notice of intent to early discharge a subject of the order may file an objection with the family court. Upon receipt of an objection, the family court shall hold a hearing on the discharge. The hearing shall be conducted as provided under section 334- .

If the family court finds by clear and convincing evidence that the subject of the order continues to meet the criteria for involuntary outpatient treatment, the family court shall order the subject to continue the outpatient treatment for the unexpired period of its earlier order.

If the family court finds that the subject of the order does not meet the criteria for involuntary outpatient treatment, the family court shall dismiss the objection and order the early discharge of the subject.

§334- Petition for additional period of treatment; hearing. Prior to the expiration of the period of involuntary outpatient treatment ordered by the family court, any person, including an outpatient treatment psychiatrist, may file a petition with the family court for an order of continued involuntary outpatient treatment. The petition shall be filed and notice provided in the same manner as under sections 334- and 334- .

The family court shall hold a hearing on the petition and make its decision in the same manner as provided under sections 334- to 334- . The family court may order the continued involuntary outpatient treatment for not more than 180 days after the date of the hearing pursuant to this section.

This section shall be in addition to the provisions on the objection to discharge.

§334- Hearing for discharge. Any person may petition the family court for the discharge of an order of involuntary outpatient treatment during the period of outpatient treatment if more than sixty days after the most recent hearing involving the subject of the order. The petition shall be filed, notice given, hearing held, and order made in the same manner as provided for the original petition alleging that the subject of the order met the criteria for involuntary outpatient treatment.”

SECTION 2. Section 802-1, Hawaii Revised Statutes, is amended to read as follows:

“§802-1 Right to representation by public defender or other appointed counsel. Any indigent person who is (1) arrested for, charged with or convicted of an offense or offenses punishable by confinement in jail or prison or for which

such person may be or is subject to the provisions of chapter 571; or (2) threatened by confinement, against his will, in any psychiatric or other mental institution or facility[,]; or (3) the subject of a petition for involuntary outpatient treatment under chapter 334 shall be entitled to be represented by a public defender. If, however, conflicting interests exist, or if the public defender for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

The appearance of the public defender in all judicial proceedings shall be subject to court approval.

The appearance of a public defender in all hearings before the Hawaii paroling authority or other administrative body or agency shall be subject to the approval of the chairman of the Hawaii paroling authority or the administrative head of the body or agency involved.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 1984.)