

ACT 231

S.B. NO. 961

A Bill for an Act Relating to Mental Health Treatment.

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

SECTION 1. Section 334-123, Hawaii Revised Statutes, is amended to read as follows:

“§334-123 Initiation of proceeding for assisted community treatment. (a) Any interested party may file a petition with the family court alleging that an-

other person meets the criteria for assisted community treatment. The petition shall state:

- (1) Each of the criteria numbered (1) through (7) for assisted community treatment, as set out in section 334-121;
- (2) Petitioner's good faith belief that the subject of the petition meets each of the criteria numbered (1) through (7) set forth in section 334-121;
- (3) Facts which support petitioner's good faith belief that the subject of the petition meets each of the criteria numbered (1) through (7) set forth in section 334-121; and
- (4) ~~[[That]]~~ the subject of the petition is present within the county where the petition is filed.

The hearing on the petition need not be limited to the facts stated in the petition. The petition shall be executed subject to the penalties of perjury.

(b) The petition may be accompanied by a certificate of a licensed psychiatrist who has examined the subject of the petition ~~[at any time] within twenty calendar days~~ prior to the ~~[submission]~~ filing of the petition. For purposes of the petition, an examination shall be considered valid so long as the licensed psychiatrist has obtained enough information from the subject of the petition to reach a diagnosis of the subject of the petition, and to express a professional opinion concerning the same, even if the subject of the petition is not fully cooperative.

~~[(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.]”~~

SECTION 2. Section 334-124, Hawaii Revised Statutes, is amended to read as follows:

“§334-124 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].”~~

SECTION 3. Section 334-125, Hawaii Revised Statutes, is amended to read as follows:

“§334-125 Notice. (a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules; ~~[and]~~
- (2) Served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, to as many as are known to the petitioner of the subject's spouse or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed;
- (3) Served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as applicable; and
- (4) Given to such other persons as the court may designate.

(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the proceedings and possible consequences to the subject, and a statement of the legal standard upon which assisted community treatment is being considered;
- (2) A copy of the petition;
- (3) Notice that the subject of the petition is entitled to the assistance of an attorney, and that the public defender has been notified of these proceedings; and

(4) Notice that if the subject does not want to be represented by the public defender, the subject may contact the subject's own attorney.

(c) Notice of all subsequent hearings shall be served in accordance with subsections (a) and (b), and in accordance with all applicable family court rules relating to service of notice, including that service need not be made on parties in default for failure to appear."

SECTION 4. Section 334-126, Hawaii Revised Statutes, is amended to read as follows:

"§334-126 Hearing on petition. (a) The court may adjourn or continue a hearing for failure to timely notify a person entitled to be notified.

(b) 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.

(c) Hearings may be held at any convenient place within the circuit. The subject of the petition, any interested party, 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.

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

(e) 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.]~~ may appoint a guardian ad litem to represent the best interests of the subject through the proceedings.

(f) ~~[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 seven days.]~~ Notwithstanding chapter 802 to the contrary, the public defender or other court-appointed counsel shall represent the subject upon filing of the petition. A copy of the petition shall be served upon the public defender by the petitioner. The public defender or the court-appointed counsel may withdraw upon a showing that the subject is not indigent. If the subject does not desire representation, the court may discharge the attorney after finding that the subject understands the proceedings and the relief prayed for in the petition. Nothing in this subsection shall be construed to:

(1) Require the subject of the petition to accept legal representation by the public defender or other court-appointed counsel; or

(2) Prevent the subject of the petition from obtaining their own legal counsel to represent them in any proceeding.

(g) 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 for preparation, and shall be permitted to present the evidence that the attorney believes necessary for a proper disposition of the proceeding.

(h) No subject of the petition shall be ordered to receive assisted community treatment unless at least one psychiatrist testifies in person at the hearing who has personally assessed the subject ~~[within the time period commencing ten calendar days before the filing of the petition and ending at the time of the psychiatrist's testimony.]~~, within a reasonable time before the filing of the peti-

tion up to the time when the psychiatrist provides oral testimony at court. The psychiatrist's testimony shall state the facts which support the allegation that the subject meets all the criteria for assisted community treatment, provide a written treatment plan, which shall include non-mental health treatment if appropriate, provide the rationale for the recommended treatment, and identify the designated mental health program responsible for the coordination of care.

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

~~[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 forty-eight hours. The examining psychiatrist shall submit the findings and recommendations to the family court in the form of a written treatment plan.~~

~~The subject of the petition's refusal to submit voluntarily to examination shall be treated as a denial that the subject is mentally ill or suffering from substance abuse, and a denial that the subject otherwise fits within the criteria for a court order of assisted community treatment.~~

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

(i) The subject of the petition may secure a psychiatric examination 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."

SECTION 5. Section 802-1, Hawaii Revised Statutes, is amended to read as follows:

"§802-1 Right to representation by public defender or other appointed counsel. (a) Any indigent person who is{;}¹

- (1) Arrested for, charged with, or convicted of an offense or offenses punishable by confinement in jail or prison or for which the person may be or is subject to the provisions of chapter 571;
- (2) Threatened by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility;
- (3) The subject of a petition for ~~[involuntary outpatient treatment]~~ assisted community treatment under chapter 334; or
- (4) The subject of a petition for involuntary medical treatment under chapter 353{;}¹

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.

(b) ~~[The]~~ Except as provided in section 334-126(f), the appearance of the public defender in all judicial proceedings shall be subject to court approval.

(c) 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 chairperson of the Hawaii paroling authority or the administrative head of the body or agency involved."

ACT 231

SECTION 6. Section 802-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~When~~ Except as provided in section 334-126(f), when it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any. If conflicting interests exist, or if the interests of justice require, the court may appoint private counsel, who shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to subsection (b). All expenses and fees shall be ordered by the court. Duly ordered payment shall be made upon vouchers approved by the director of finance and warrants drawn by the comptroller.”

SECTION 7. Act 221, Session Laws of Hawaii 2013, is amended by amending section 21 to read as follows:

“SECTION 21. (a) Any treating provider wishing to file a petition pursuant to section 334-123, Hawaii Revised Statutes, for assisted community treatment shall:

- (1) Obtain historical information related to MH-1s and hospitalization of persons who are under an order to treat; and
- (2) Track further episodes of MH-1s and hospitalization while the persons are under the order.

(b) An entity designated by the department of health shall gather information from treating providers related to MH-1s and hospitalization of persons who are under an order to treat ~~and~~. Treating providers shall provide the information specified in subsection (a)(1) and (2) to the department of health, or its designee, by September 30 of each year for the purposes of compiling the written report. The department of health shall submit an annual report of its findings and recommendations to the legislature no later than twenty days prior to the convening of every regular session beginning with the regular session of 2015.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval; provided that the amendments made to sections 334-123, 334-125, and 334-126, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2020, pursuant to section 24, Act 221, Session Laws of Hawaii 2013.

(Approved July 13, 2015.)

Note

1. So in original.