

JAN 21 2011

S.B. NO. 968

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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the consequences of  
2 untreated mental illness are homelessness, criminalization,  
3 suicide, violence, victimization, lost productivity, permanently  
4 decreased medication responses, and the incalculable costs of  
5 unnecessary suffering. Due to advances in mental health care in  
6 recent years, treatment is now available that can eliminate or  
7 substantially alleviate the symptoms of mental illness for most  
8 who suffer from it.

9           When a diagnosis of any illness is made, most people seek  
10 medication, therapy, or helpful guidance back to regain health.  
11 That takes rational thinking, which is often snatched away by  
12 mental illness. When brain chemistry goes wrong, everything  
13 changes until that chemical balance is restored. That is  
14 precisely why people with mental illness who are involved with  
15 potential criminal activity should be approached, processed, and  
16 managed in accordance with their illness.

17           Voluntary treatment is always preferable. However, mental  
18 illness is a biologically-based disease that attacks the brain.



1 As a result, mental illness renders many people incapable of  
2 voluntarily entering mental treatment because they are unable to  
3 make rational decisions or are unaware that they are ill. When  
4 this occurs, people may require assisted treatment to protect  
5 their lives as well as avoid tragic personal and societal  
6 consequences.

7 The causes of serious mental illness are still unknown, but  
8 the effects of serious mental illness remain devastating. People  
9 who are suffering from schizophrenia or bipolar disorder often  
10 become psychotic and separated from reality. In this condition,  
11 they do not know what they are doing and can become part of a  
12 world that is totally different from reality. As wrong and  
13 dangerous as their thoughts may be, those thoughts are true and  
14 compelling to them. Active psychosis is not controllable until  
15 stabilization and orientation returns through medication and  
16 therapy. One aspect of psychosis, by definition, is the  
17 inability of a person to grasp the harm that the person may be  
18 doing to that person's self or others.

19 The purpose of this Act is to establish a legal framework  
20 for the provision of care to individuals who, due to the  
21 symptoms of severe mental illness, become either dangerous or



1 incapable of making informed medical decisions concerning their  
2 treatment.

3 SECTION 2. Chapter 334, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§334- Reference in penal code to "involuntary  
7 outpatient treatment". Any reference to the term "involuntary  
8 outpatient treatment" in any section of the Hawaii Penal Code or  
9 chapter 802 shall be deemed to refer to "assisted outpatient  
10 treatment", and the terms "involuntary outpatient treatment" and  
11 "assisted outpatient treatment" shall be considered  
12 interchangeable for purposes of the Hawaii Penal Code and  
13 chapter 802."

14 SECTION 3. Section 334-122, Hawaii Revised Statutes, is  
15 amended by adding two new definitions to be appropriately  
16 inserted and to read as follows:

17 "Assisted outpatient treatment" means assisted treatment  
18 on an outpatient basis.

19 "Assisted treatment" means the provision of treatment to  
20 individuals who are dangerous or incapable of making informed  
21 medical decisions because of the effects of severe mental  
22 illness."



1 SECTION 4. Section 334-59, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) Initiation of proceedings. An emergency admission  
5 may be initiated as follows:

6 (1) If a police officer has reason to believe that a  
7 person is imminently dangerous to the person's self or  
8 others, or is gravely disabled, or is obviously  
9 mentally ill, the officer shall call for assistance  
10 from the mental health emergency workers designated by  
11 the director. Upon determination by the mental health  
12 emergency workers that the person is imminently  
13 dangerous to the person's self or others, or is  
14 gravely disabled, or is obviously ill, the person  
15 shall be transported by ambulance or other suitable  
16 means, to a licensed psychiatric facility for further  
17 evaluation and possible emergency hospitalization. A  
18 police officer may also take into custody and  
19 transport to any facility designated by the director  
20 any person threatening or attempting suicide[-] or  
21 self harm. The officer shall make application for the  
22 examination, observation, and diagnosis of the person



1 in custody. The application shall state or shall be  
2 accompanied by a statement of the circumstances under  
3 which the person was taken into custody and the  
4 reasons therefor which shall be transmitted with the  
5 person to a physician or psychologist at the facility.

6 (2) Upon written or oral application of any licensed  
7 physician, psychologist, attorney, member of the  
8 clergy, health or social service professional, or any  
9 state or county employee in the course of employment,  
10 a judge may issue an ex parte order orally, but shall  
11 reduce the order to writing by the close of the next  
12 court day following the application, stating that  
13 there is probable cause to believe the person is  
14 mentally ill or suffering from substance abuse, is  
15 imminently dangerous to the person's self or others,  
16 or is gravely disabled, or is obviously mentally ill,  
17 and in need of care or treatment, or both, giving the  
18 findings on which the conclusion is based, and  
19 directing that a police officer or other suitable  
20 individual take the person into custody and deliver  
21 the person to the nearest facility designated by the  
22 director for emergency examination and treatment. The



1           ex parte order shall be made a part of the patient's  
2           clinical record. If the application is oral, the  
3           person making the application shall reduce the  
4           application to writing and shall submit the same by  
5           noon of the next court day to the judge who issued the  
6           oral ex parte order. The written application shall be  
7           executed subject to the penalties of perjury but need  
8           not be sworn to before a notary public.

9           (3) Any licensed physician, physician assistant, or  
10           psychologist who has examined a person and has reason  
11           to believe the person is:

12           (A) Mentally ill or suffering from substance abuse;

13           (B) Imminently dangerous to the person's self or  
14           others, or is gravely disabled, or is obviously  
15           ill; and

16           (C) In need of care or treatment;

17           may direct transportation, by ambulance or other  
18           suitable means, to a licensed psychiatric facility for  
19           further evaluation and possible emergency  
20           hospitalization. A licensed physician or physician  
21           assistant may administer treatment as is medically  
22           necessary, for the person's safe transportation. A



1 licensed psychologist may administer treatment as is  
2 psychologically necessary."

3 2. By amending subsection (d) to read:

4 "(d) Emergency hospitalization. If the physician or the  
5 psychologist who performs the emergency examination has reason  
6 to believe that the patient is:

- 7 (1) Mentally ill or suffering from substance abuse;
- 8 (2) Imminently dangerous to the patient's self or others,  
9 or is gravely disabled, or is obviously ill; and
- 10 (3) In need of care or treatment, or both;

11 the physician or the psychologist may direct that the patient be  
12 hospitalized on an emergency basis or cause the patient to be  
13 transferred to another psychiatric facility for emergency  
14 hospitalization, or both. The patient shall have the right  
15 immediately upon admission to telephone the patient's guardian  
16 or a family member including a reciprocal beneficiary, or an  
17 adult friend and an attorney. If the patient declines to  
18 exercise that right, the staff of the facility shall inform the  
19 adult patient of the right to waive notification to the family  
20 including a reciprocal beneficiary, and shall make reasonable  
21 efforts to ensure that the patient's guardian or family,  
22 including a reciprocal beneficiary, is notified of the emergency



1 admission but the patient's family, including a reciprocal  
2 beneficiary, need not be notified if the patient is an adult and  
3 requests that there be no notification. The patient shall be  
4 allowed to confer with an attorney in private."

5 SECTION 5. Section 334-121, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§334-121 Criteria for ~~involuntary~~ assisted outpatient**  
8 **treatment.** A person may be ordered to obtain ~~involuntary~~  
9 assisted outpatient treatment if the family court finds that:

- 10 (1) The person is suffering from a severe mental disorder  
11 or from substance abuse; [and]
- 12 (2) The person is ~~capable~~ incapable of surviving safely  
13 in the community with available supervision from  
14 family, friends, or others; [and]
- 15 (3) The person, at some time in the past [~~—(A) has~~  
16 ~~received inpatient hospital treatment for a severe~~  
17 ~~mental disorder or substance abuse, or (B)] has been  
18 imminently dangerous to the person's self or others,  
19 or is gravely disabled, as a result of a severe mental  
20 disorder or substance abuse; [and]~~
- 21 (4) The person, based on the person's treatment history  
22 and current behavior, is now in need of treatment in





1 order to prevent a relapse or deterioration which  
2 would predictably result in the person becoming  
3 imminently dangerous to the person's self or others;  
4 [and]

5 (5) The person's current mental status or the nature of  
6 the person's disorder limits or negates the person's  
7 ability to make an informed decision to voluntarily  
8 seek or comply with recommended treatment; and

9 (6) There is a reasonable prospect that the outpatient  
10 treatment ordered will be beneficial to the person."

11 SECTION 6. Section 334-122, Hawaii Revised Statutes, is  
12 amended by amending the definition of "subject of the petition"  
13 to read as follows:

14 "Subject of the petition" means the person who, under a  
15 petition filed under section 334-123, is alleged to meet the  
16 criteria for [~~involuntary~~] assisted outpatient treatment."

17 SECTION 7. Section 334-123, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Any person may file a petition with the family court  
20 alleging that another person meets the criteria for  
21 [~~involuntary~~] assisted outpatient treatment. The petition shall  
22 state:



- 1           (1) Each of the criteria numbered (1) through (6) for  
2           [~~involuntary~~] assisted outpatient treatment, as set  
3           out in section 334-121;
- 4           (2) Petitioner's good faith belief that the subject of the  
5           petition meets each of criteria numbered (1) through  
6           (4) set forth in section 334-121;
- 7           (3) Facts which support petitioner's good faith belief  
8           that the subject of the petition meets each of the  
9           criteria numbered (1) through (4) set forth in section  
10          334-121, provided that the hearing on the petition  
11          need not be limited to the stated facts; and
- 12          (4) That the subject of the petition is present within the  
13          county where the petition is filed.

14          The petition shall be executed subject to the penalties of  
15          perjury. The petition need not express any belief, or state any  
16          supporting facts, with reference to the criteria set forth in  
17          section 334-121(5) and (6), but all six criteria will be  
18          addressed at the hearing."

19          SECTION 8. Section 334-125, Hawaii Revised Statutes, is  
20          amended by amending subsection (b) to read as follows:

21          "(b) The notice shall include the following:



- 1           (1) The date, time, place of hearing, a clear statement of  
2           the purpose of the hearing and possible consequences  
3           to the subject, and a statement of the legal standard  
4           upon which [~~involuntary~~] assisted outpatient treatment  
5           is authorized;
- 6           (2) A copy of the petition; and
- 7           (3) Notice that the subject of the petition is entitled to  
8           be represented by an attorney, and that the court will  
9           appoint a public defender or other attorney for the  
10          subject if the subject desires one and is indigent."

11          SECTION 9. Section 334-126, Hawaii Revised Statutes, is  
12          amended by amending subsection (g) to read as follows:

13          "(g) No subject of the petition shall be ordered to  
14          receive [~~involuntary~~] assisted outpatient treatment unless at  
15          least one psychiatrist testifies in person at the hearing who  
16          has personally examined the subject [~~within the time period~~  
17          ~~commencing five calendar days before the filing of the petition~~  
18          ~~and ending at the time of the psychiatrist's testimony~~]. The  
19          psychiatrist's testimony shall state the facts which support the  
20          allegation that the subject meets all the criteria for  
21          [~~involuntary~~] assisted outpatient treatment, the recommended



1 outpatient treatment, and the rationale for the recommended  
2 outpatient treatment.

3 If the recommended outpatient treatment includes  
4 medication, the psychiatrist's testimony shall describe the  
5 types or classes of [~~medication(s)~~] medication or medications  
6 which should be authorized, and describe the physical and mental  
7 beneficial and detrimental effects of [~~such medication(s).~~]  
8 medication or medications.

9 If the subject of the petition has refused to be examined  
10 by a licensed psychiatrist, the family court may request the  
11 subject to consent to examination by a psychiatrist appointed by  
12 the court or employed at a community mental health center. If  
13 the subject of the petition does not consent and the family  
14 court finds sufficient evidence to believe that the allegations  
15 in the petition are true, the family court may order the  
16 commitment of the subject to a psychiatric facility for  
17 examination. The commitment shall not be for more than  
18 [~~twenty-four~~] seventy-two hours[-] unless conditions are met for  
19 continuing inpatient commitment. The examining psychiatrist  
20 shall submit the findings and recommendations to the family  
21 court.



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

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

8           SECTION 10. Section 334-127, Hawaii Revised Statutes, is  
9 amended by amending subsections (a) and (b) to read as follows:

10           "(a) If after hearing all relevant evidence, including the  
11 results of an examination ordered by the family court, the  
12 family court finds that the subject of the petition does not  
13 meet the criteria for [~~involuntary~~] assisted outpatient  
14 treatment, the family court shall dismiss the petition.

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



1           If the court finds by clear and convincing evidence that  
2 the beneficial mental and physical effects of the recommended  
3 [~~medication(s)~~] medication or medications outweigh the  
4 detrimental mental and physical effects, if any, the order may  
5 authorize types or classes of [~~medication(s)~~] medication or  
6 medications to be included in outpatient treatment in the  
7 discretion of the outpatient treatment psychiatrist.

8           The court order shall also state who should receive notice  
9 of intent to early discharge the subject in the event that the  
10 outpatient treatment psychiatrist determines, prior to the end  
11 of the court ordered period of treatment, that the subject  
12 should be early discharged from [~~outpatient involuntary~~]  
13 assisted outpatient treatment."

14           SECTION 11. Section 334-131, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "~~+~~§334-131~~+~~ **Early discharge.** ~~+~~(a)~~+~~ An outpatient  
17 treatment psychiatrist shall commence the early discharge  
18 procedure for a subject of the order if the outpatient treatment  
19 psychiatrist finds that the subject no longer meets the criteria  
20 for [~~involuntary~~] assisted outpatient treatment~~-~~ and is of the  
21 clinical opinion that the subject will not decompensate as a  
22 result of early discharge.



1           The outpatient treatment psychiatrist shall send to the  
2 clerk of the family court which issued the order for  
3 ~~[involuntary]~~ assisted outpatient treatment, notification that  
4 in the psychiatrist's opinion the subject of the order should be  
5 discharged prior to the end of the period specified in the court  
6 order.

7           The clerk of the court shall then prepare and mail the  
8 notice of intent to early discharge the subject to the persons  
9 ~~[whom]~~ who are entitled to the notice pursuant to the family  
10 court order ~~[specified are entitled thereto, a notice of intent~~  
11 ~~of early discharge]~~. The notice of intent ~~[of]~~ to early  
12 discharge the subject shall be mailed at least five days prior  
13 to the intended date of discharge.

14           (b) If no objection is filed under section 334-132 within  
15 five days of the mailing of notice, the family court shall enter  
16 an order of discharge~~[, and]~~. The subject of the order ~~[is]~~  
17 shall thereupon be fully discharged from ~~[involuntary]~~ assisted  
18 outpatient treatment and the clerk of the family court shall  
19 promptly ~~[se]~~ notify the subject of the order."

20           SECTION 12. Section 334-132, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           " [†]§334-132[†] **Objection to discharge.** Any person who  
2 has received a notice of intent to early discharge a subject of  
3 the order may file an objection with the family court. Upon  
4 receipt of an objection, the family court shall hold a hearing  
5 on the discharge. The hearing shall be conducted as provided  
6 under section 334-134.

7           If the family court finds by clear and convincing evidence  
8 that the subject of the order continues to meet the criteria or  
9 would meet the criteria if the order is suspended for  
10 [~~involuntary~~] assisted outpatient treatment, the family court  
11 shall order the subject to continue the outpatient treatment for  
12 the unexpired period of its earlier order.

13           If the family court finds that the subject of the order  
14 does not meet the criteria for [~~involuntary~~] assisted outpatient  
15 treatment [~~7~~] and suspension of the order will not result in  
16 decompensation of the subject, the family court shall dismiss  
17 the objection and order the early discharge of the subject."

18           SECTION 13. Section 334-133, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           " [†]§334-133[†] **Petition for additional period of**  
21 **treatment; hearing.** Prior to the expiration of the period of  
22 [~~involuntary~~] assisted outpatient treatment ordered by the





1 family court, any person, including an outpatient treatment  
2 psychiatrist, may file a petition with the family court for an  
3 order of continued [~~involuntary~~] assisted outpatient treatment.  
4 The petition shall be filed and notice provided in the same  
5 manner as provided under sections 334-123 and 334-125.

6 The family court shall hold a hearing on the petition and  
7 make its decision in the same manner as provided under sections  
8 334-123 to 334-127. The family court may order the continued  
9 [~~involuntary~~] assisted outpatient treatment for not more than  
10 180 days after the date of the hearing pursuant to this section.

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

13 SECTION 14. Section 334-134, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~+~~]**\$334-134**[~~+~~] **Hearing for discharge.** Any person may  
16 petition the family court for the discharge of an order of  
17 [~~involuntary~~] assisted outpatient treatment during the period of  
18 outpatient treatment if more than sixty days [~~after~~] have  
19 transpired since the most recent hearing involving the subject  
20 of the order. The petition shall be filed, notice given,  
21 hearing held, and order made in the same manner as provided for



1 the original petition alleging that the subject of the order met  
2 the criteria for [~~involuntary~~] assisted outpatient treatment."

3 SECTION 15. Chapter 334, Hawaii Revised Statutes, is  
4 amended by amending the title to part VIII to read as follows:

5 "PART VIII. [~~INVOLUNTARY~~] ASSISTED OUTPATIENT TREATMENT"

6 SECTION 16. The department of health shall monitor each  
7 individual who requires assisted outpatient treatment.

8 SECTION 17. This Act does not affect rights and duties  
9 that matured, penalties that were incurred, and proceedings that  
10 were begun before its effective date.

11 SECTION 18. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 19. This Act shall take effect upon its approval.

14

INTRODUCED BY: Shianne Chun Oakland

*Carol Johnson*



**Report Title:**  
Mental Health

**Description:**  
Amends involuntary outpatient treatment to assisted outpatient treatment.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

