
A BILL FOR AN ACT

RELATING TO MENTAL HEALTH TREATMENT.

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

1 SECTION 1. The legislature finds that part IV of chapter
2 334, Hawaii Revised Statutes, includes procedures authorizing
3 any person to petition a court to commit another person in the
4 same county to a psychiatric facility under certain limited
5 circumstances. Pursuant to section 334-60.3(a), Hawaii Revised
6 Statutes, the petition may be accompanied by a certificate from
7 a medical professional that describes the symptoms justifying
8 the need for treatment and stating whether the person is capable
9 of realizing and making a rational decision with respect to the
10 person's need for treatment. Pursuant to section 334-60.5(g),
11 Hawaii Revised Statutes, no person may be found to require
12 treatment in a psychiatric facility unless at least one medical
13 professional who has personally examined the person testifies in
14 person at the hearing on the petition.

15 The respondent to the petition for involuntary
16 hospitalization may be committed to a psychiatric facility if



1 the court finds all of the following criteria under section 334-
2 60.2, Hawaii Revised Statutes:

- 3 (1) That the respondent is mentally ill or suffering from
4 substance abuse;
- 5 (2) That the respondent is imminently dangerous to self or
6 others; and
- 7 (3) That the respondent is in need of care or treatment,
8 or both, and there is no suitable alternative
9 available through existing facilities and programs
10 that would be less restrictive than hospitalization.

11 "Dangerous to self" and "dangerous to others" are defined
12 in section 334-1, Hawaii Revised Statutes, as collectively
13 meaning that the respondent recently has:

- 14 (1) Threatened or attempted suicide or serious bodily harm
15 to self;
- 16 (2) Behaved in such a manner as to indicate that the
17 respondent is unable, without supervision and the
18 assistance of others, to satisfy the need for
19 nourishment, essential medical care, shelter or self-
20 protection, so that it is probable that death,
21 substantial bodily injury, or serious physical



1 deilitation or disease to self will result unless
2 adequate treatment is afforded; or

3 (3) Engaged in an act, attempt, or threat that makes the
4 respondent likely to do substantial physical or
5 emotional injury on another.

6 These definitions are consistent with the criteria for
7 involuntary commitment applied in most other states that require
8 a finding of danger to self or others, using a standard of a
9 serious or substantial risk, likelihood, or probability of harm.
10 However, the standard in Hawaii is that of an "imminent" danger
11 to self or others. In the few states that operate under that
12 threshold for involuntary commitment, it is possible for the
13 respondent to be discharged from the proceedings, even if harm
14 is virtually certain to occur in the future, if the respondent
15 does not exhibit any signs of immediate danger during the
16 involuntary commitment proceedings. If the imminent
17 dangerousness standard is applied in this manner, it is unlikely
18 that an involuntary commitment petition will be successful given
19 the improbability of a mentally ill individual exhibiting signs
20 of imminent dangerousness at the time of the hearing.



1 The legislature recognizes that, pursuant to Act 221,
2 Session Laws of Hawaii 2013, the imminent dangerousness standard
3 for involuntary commitment in Hawaii is scheduled to be expanded
4 in 2020 to once again include individuals who are "gravely
5 disabled" or "obviously ill." These categories of mental
6 illness, which do not rise to the level of imminent
7 dangerousness but involve issues of mental illness requiring
8 treatment, were originally encompassed by the involuntary
9 commitment law but temporarily eliminated therefrom by Act 221
10 in furtherance of a pilot program for assisted community
11 treatment that is scheduled to terminate on July 1, 2020. The
12 assisted community treatment program provides a newer approach
13 to involuntary outpatient treatment for the mentally ill
14 designed to expand outpatient treatment options in the
15 community, with the goal of reducing hospitalization rates,
16 lengths of hospital stays, arrest rates, and days spent in
17 correctional confinement facilities by providing more
18 opportunities for the treatment of severe mental illness in the
19 least restrictive setting.

20 While the legislature supports the continued evaluation of
21 the temporary assisted community treatment program under Act



1 221, Session Laws of Hawaii 2013, in the meantime the resulting
2 effect of having imminent dangerousness serve as the main
3 standard for the involuntary commitment of mentally ill persons
4 leaves Hawaii communities with an unworkable law that, in actual
5 application, makes it extremely difficult to fulfill the law's
6 original purpose of protecting communities and providing
7 necessary treatment to mentally ill individuals posing a danger
8 to themselves or others. The problem stemming from the lack of
9 an effective option for involuntary hospitalizations has become
10 particularly pronounced with the recent rise in Hawaii of the
11 homeless population, which includes mentally ill individuals who
12 may pose a risk of harm to themselves, other persons, or
13 property. The legislature finds it essential to establish a
14 better standard for involuntary hospitalizations that would
15 allow for the commitment of mentally ill individuals who are
16 likely to behave dangerously in the future without treatment or
17 protection.

18 The purpose of this Act is to facilitate involuntary
19 hospitalizations and other forms of treatment for the protection
20 of mentally ill individuals and the public, by replacing the



1 current standard of imminent dangerousness with the criterion of
2 a likelihood of harm to self or others based on recent behavior.

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

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

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

8 (1) If a law enforcement officer has reason to believe
9 that a person is [imminently] dangerous to self or
10 others, the officer shall call for assistance from the
11 mental health emergency workers designated by the
12 director. Upon determination by the mental health
13 emergency workers that the person is [imminently]
14 dangerous to self or others, the person shall be
15 transported by ambulance or other suitable means, to a
16 licensed psychiatric facility for further evaluation
17 and possible emergency hospitalization. A law
18 enforcement officer may also take into custody and
19 transport to any facility designated by the director
20 any person threatening or attempting suicide, or may
21 take into custody and transport to any designated



1 mental health program, any person subject to an
2 assisted community treatment order, issued pursuant to
3 part VIII of this chapter, for further evaluation and
4 possible emergency hospitalization. The officer shall
5 make application for the examination, observation, and
6 diagnosis of the person in custody. The application
7 shall state or shall be accompanied by a statement of
8 the circumstances under which the person was taken
9 into custody and the reasons therefor which shall be
10 transmitted with the person to a physician, advanced
11 practice registered nurse, or psychologist at the
12 facility, or to a licensed psychiatrist at a
13 designated mental health program.

14 (2) Upon written or oral application of any licensed
15 physician, advanced practice registered nurse,
16 psychologist, attorney, member of the clergy, health
17 or social service professional, or any state or county
18 employee in the course of employment, a judge may
19 issue an ex parte order orally, but shall reduce the
20 order to writing by the close of the next court day
21 following the application, stating that there is



1 probable cause to believe the person is mentally ill
2 or suffering from substance abuse or is [~~imminently~~]
3 dangerous to self or others and in need of care or
4 treatment, or both, giving the findings upon which the
5 conclusion is based, and directing that a law
6 enforcement officer or other suitable individual take
7 the person into custody and deliver the person to the
8 nearest facility designated by the director for
9 emergency examination and treatment. The ex parte
10 order shall be made a part of the patient's clinical
11 record. If the application is oral, the person making
12 the application shall reduce the application to
13 writing and shall submit the same by noon of the next
14 court day to the judge who issued the oral ex parte
15 order. The written application shall be executed
16 subject to the penalties of perjury but need not be
17 sworn to before a notary public.

18 (3) Any licensed physician, advanced practice registered
19 nurse, physician assistant, or psychologist who has
20 examined a person and has reason to believe the person
21 is:



1 (A) Mentally ill or suffering from substance abuse;
 2 (B) [~~Imminently dangerous~~] Dangerous to self or
 3 others; and
 4 (C) In need of care or treatment;
 5 may direct transportation, by ambulance or other
 6 suitable means, to a licensed psychiatric facility for
 7 further evaluation and possible emergency
 8 hospitalization. A licensed physician, an advanced
 9 practice registered nurse, or physician assistant may
 10 administer treatment as is medically necessary, for
 11 the person's safe transportation. A licensed
 12 psychologist may administer treatment as is
 13 psychologically necessary."

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

15 "(d) Emergency hospitalization. If the physician,
 16 advanced practice registered nurse, or psychologist who performs
 17 the emergency examination has reason to believe that the patient
 18 is:

- 19 (1) Mentally ill or suffering from substance abuse;
- 20 (2) [~~Imminently dangerous~~] Dangerous to self or others;
- 21 and



1 (3) In need of care or treatment, or both;
2 the physician, advanced practice registered nurse, or
3 psychologist may direct that the patient be hospitalized on an
4 emergency basis or cause the patient to be transferred to
5 another psychiatric facility for emergency hospitalization, or
6 both. The patient shall have the right immediately upon
7 admission to telephone the patient's guardian or a family member
8 including a reciprocal beneficiary, or an adult friend and an
9 attorney. If the patient declines to exercise that right, the
10 staff of the facility shall inform the adult patient of the
11 right to waive notification to the family including a reciprocal
12 beneficiary, and shall make reasonable efforts to ensure that
13 the patient's guardian or family including a reciprocal
14 beneficiary, is notified of the emergency admission but the
15 patient's family including a reciprocal beneficiary, need not be
16 notified if the patient is an adult and requests that there be
17 no notification. The patient shall be allowed to confer with an
18 attorney in private."

19 SECTION 3. Section 334-60.2, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§334-60.2 Involuntary hospitalization criteria. A person
 2 may be committed to a psychiatric facility for involuntary
 3 hospitalization, if the court finds:

4 (1) That the person is mentally ill or suffering from
 5 substance abuse;

6 (2) That the person is [~~imminently~~] dangerous to self or
 7 others; and

8 (3) That the person is in need of care or treatment, or
 9 both, and there is no suitable alternative available
 10 through existing facilities and programs which would
 11 be less restrictive than hospitalization."

12 SECTION 4. Section 334-121, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "§334-121 Criteria for assisted community treatment. A
 15 person may be ordered to obtain assisted community treatment if
 16 the family court finds that:

17 (1) The person is mentally ill or suffering from substance
 18 abuse; and

19 (2) The person is unlikely to live safely in the community
 20 without available supervision based on the
 21 professional opinion of a psychiatrist; and



- 1 (3) The person, at some time in the past: (A) has
2 received inpatient hospital treatment for mental
3 illness or substance abuse or (B) has been found to be
4 ~~[imminently]~~ dangerous to self or others, as a result
5 of mental illness or substance abuse; and
- 6 (4) The person, based on the person's treatment history
7 and current condition, is now in need of treatment in
8 order to prevent a relapse or deterioration which
9 would predictably result in the person becoming
10 ~~[imminently]~~ dangerous to self or others; and
- 11 (5) The person has a history of a lack of adherence to
12 treatment for mental illness or substance abuse, and
13 the person's current mental status or the nature of
14 the person's disorder limits or negates the person's
15 ability to make an informed decision to voluntarily
16 seek or comply with recommended treatment; and
- 17 (6) The assisted community treatment is medically
18 appropriate, and in the person's medical interests;
19 and



1 (7) Considering less intrusive alternatives, assisted
 2 community treatment is essential to prevent the danger
 3 posed by the person."

4 SECTION 5. Section 334-142, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 "[+]§334-142[+] Petition. Any family member may petition
 7 the family court for an order requiring a respondent to enter
 8 into an outpatient treatment program for substance abuse. The
 9 petition shall be in writing under penalty of perjury and
 10 include facts relating to:

- 11 (1) The conduct of the respondent that indicates substance
 12 abuse or addiction;
- 13 (2) The respondent's history of substance abuse,
 14 treatment, and relapse;
- 15 (3) The effects of the respondent's conduct on the family;
- 16 (4) The petitioner's good faith belief that the respondent
 17 poses [~~an imminent~~] a danger to self or to others if
 18 the respondent does not receive treatment;
- 19 (5) The availability of treatment and financial resources
 20 to pay for treatment; and
- 21 (6) Any other reason for seeking court intervention."



1 SECTION 6. Section 334-144, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The court may grant the petition if it finds clear
4 and convincing evidence that:

5 (1) The respondent has a history of substance abuse and
6 refuses to enter treatment voluntarily;

7 (2) The respondent has a family support system that will
8 encourage and participate in the respondent's
9 treatment program;

10 (3) The respondent can benefit from outpatient treatment
11 and is capable of surviving safely in the community
12 with the family support system and if outpatient
13 treatment is received;

14 (4) The respondent or the petitioner has financial
15 resources to pay for the outpatient treatment program;

16 (5) The respondent poses [~~an imminent~~] a danger to self or
17 to others if treatment is not received; and

18 (6) The respondent understands the nature of the
19 proceeding and the effect of the court order to enter
20 into outpatient treatment."



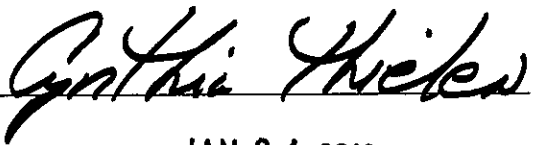
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1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval;
4 provided that the amendments made to sections 334-59, 334-60.2,
5 and 334-121, Hawaii Revised Statutes, by this Act shall not be
6 repealed when those sections are reenacted on July 1, 2020,
7 pursuant to section 24 of Act 221, Session Laws of Hawaii 2013.

8

INTRODUCED BY:



JAN 21 2016



H.B. NO. 1686

Report Title:

Mental Health Treatment; Involuntary Hospitalization

Description:

Amends the criteria for involuntary hospitalizations and other forms of mental health treatment to replace the current standard of imminent dangerousness with the criterion of a likelihood of harm to self or others based on recent behavior.

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