



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2017

GOV. MSG. NO. 1212

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

HB554 HD1 SD2 CD1

RELATING TO ORDERS FOR TREATMENT
OVER OBJECTION
ACT 111 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO ORDERS FOR TREATMENT OVER OBJECTION.

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

1 SECTION 1. The legislature finds that the initiation of
2 treatment for patients admitted to the Hawaii state hospital
3 needs to be expedient to address patients' psychiatric symptoms
4 and protect the safety of the patient and others.

5 The legislature further finds that the Hawaii state
6 hospital is used primarily for forensic commitments, and that
7 addressing patients' psychiatric symptoms quickly at the
8 initiation of treatment will help maintain a safe and secure
9 therapeutic environment for patients and staff as well as have a
10 positive impact on the patients' length of stay. Addressing the
11 committed person's psychiatric symptoms quickly helps maintain a
12 safe and secure environment for the individual involved and
13 persons who surround the committed person.

14 The legislature notes that the current method to obtain
15 an authorization to provide treatment over a patient's objection
16 is by a judicial hearing. Although dependent on circumstances,
17 the average time between the petition and judicial hearing is
18 nearly seventeen days. Other states have addressed the



1 variability and length of time before the judicial hearing by
2 developing a nonjudicial, administrative process to review and
3 authorize requests for treatment despite a patient's objections.

4 The purpose of this Act is to permit an administrative
5 order to overcome a patient's objection to psychiatric
6 treatment, establish criteria for issuance of the administrative
7 order, and establish criteria for an administrative
8 authorization process to determine whether the administrative
9 order should be issued.

10 SECTION 2. Chapter 334, Hawaii Revised Statutes, is
11 amended by adding a new part to be appropriately designated and
12 to read as follows:

13 "PART . ADMINISTRATION OF TREATMENT OVER THE PATIENT'S
14 OBJECTION

15 §334-A Criteria for issuance of court or administrative
16 order for treatment over the patient's objection. (a) A
17 patient who has been committed to a psychiatric facility for
18 involuntary hospitalization or who is in the custody of the
19 director and residing in a psychiatric facility may be ordered
20 to receive treatment over the patient's objection, including the
21 taking or application of medication, if the court, or



1 administrative panel through the administrative authorization
2 process established pursuant to section 334-B, finds that:

- 3 (1) The patient suffers from a physical or mental disease,
4 disorder, or defect;
- 5 (2) The patient is imminently dangerous to self or others;
- 6 (3) The proposed treatment is medically appropriate; and
- 7 (4) After considering less intrusive alternatives,
8 treatment is necessary to forestall the danger posed
9 by the patient.

10 (b) For the purposes of this section, "imminently
11 dangerous to self or others" means that, without intervention,
12 the person will likely become dangerous to self or dangerous to
13 others within the next forty-five days.

14 **§334-B Criteria for administrative authorization**
15 **process.** (a) A patient who is in the custody of the director
16 and in a psychiatric facility may be ordered to receive medical
17 treatment over the patient's objection through an administrative
18 authorization process that includes the following due process
19 safeguards:



1 (1) The facility shall give notice to the patient of the
2 authorization process and the reasons for initiating
3 the process;

4 (2) The administrative panel shall consist of three
5 members with relevant clinical training and
6 experience, and who are not involved with the current
7 treatment of the patient;

8 (3) The patient shall have the right to attend the
9 hearing, receive assistance from an advisor, cross
10 examine witnesses, and present testimony, exhibits,
11 and witnesses; and

12 (4) The patient shall have the right to appeal the
13 decision of the administrative panel.

14 (b) The administrative process described by this section
15 is exempt from the contested case requirements of sections
16 91-8.5 to 91-15.

17 (c) The department may adopt rules, pursuant to chapter
18 91, to effectuate this part."

19 SECTION 3. Section 334E-2, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Any patient in a psychiatric facility shall be
2 afforded rights[7], and any psychiatric facility shall provide
3 the rights to all patients; provided that when a patient is not
4 able to exercise the patient's rights, the patient's legal
5 guardian or legal representative shall have the authority to
6 exercise the same on behalf of the patient. The rights shall
7 include[7] but not be limited to[7] the following:

- 8 (1) Access to written rules and regulations with which the
9 patient is expected to comply;
- 10 (2) Access to the facility's grievance procedure or to the
11 department of health as provided in section 334-3;
- 12 (3) Freedom from reprisal;
- 13 (4) Privacy, respect, and personal dignity;
- 14 (5) A humane environment;
- 15 (6) Freedom from discriminatory treatment based on race,
16 color, creed, national origin, age, and sex;
- 17 (7) A written treatment plan based on the individual
18 patient;
- 19 (8) Participation in the planning of the patient's
20 treatment plan;



- 1 (9) Refusal of treatment except in emergency situations or
2 [~~where a court order exists;~~] when a court order or an
3 administrative order pursuant to chapter 334, part ,
4 has been issued;
- 5 (10) Refusal to participate in experimentation;
- 6 (11) The choice of physician if the physician chosen
7 agrees;
- 8 (12) A qualified, competent staff;
- 9 (13) A medical examination before initiation of non-
10 emergency treatment;
- 11 (14) Confidentiality of the patient's records;
- 12 (15) Access to the patient's records;
- 13 (16) Knowledge of rights withheld or removed by a court or
14 by law;
- 15 (17) Physical exercise and recreation;
- 16 (18) Adequate diet;
- 17 (19) Knowledge of the names and titles of staff members
18 with whom the patient has frequent contact;
- 19 (20) The right to work at the facility and fair
20 compensation for work done; provided that work is
21 available and is part of the patient's treatment plan;



- 1 (21) Visitation rights, unless the patient poses a danger
- 2 to self or others; provided that where visitation is
- 3 prohibited, the legal guardian or legal representative
- 4 shall be allowed to visit the patient upon request;
- 5 (22) Uncensored communication;
- 6 (23) Notice of and reasons for an impending transfer;
- 7 (24) Freedom from seclusion or restraint, except:
- 8 (A) When necessary to prevent injury to self or
- 9 others; [øæ]
- 10 (B) When part of the treatment plan; or
- 11 (C) When necessary to preserve the rights of other
- 12 patients or staff;
- 13 (25) Disclosure to a court, at an involuntary civil
- 14 commitment hearing, of all treatment procedures which
- 15 have been administered prior to the hearing; and
- 16 (26) Receipt by the patient and the patient's guardian or
- 17 legal guardian, if the patient has one, of this
- 18 enunciation of rights at the time of admission."

19 SECTION 4. The department of health and the department of
 20 public safety shall work collaboratively to identify and develop
 21 policies, procedures, staffing requirements, and recommendations



1 for legislation to implement a process, based on best practices
2 from other jurisdictions, that shall be available to the
3 department of public safety to obtain administrative orders to
4 overcome the objection of a patient subject to the jurisdiction
5 of the department of public safety to psychiatric treatment,
6 establish criteria for issuance of the administrative order, and
7 establish criteria for an administrative authorization process
8 to determine whether the administrative order should be issued.

9 SECTION 5. The department of health shall report annually
10 to the legislature on the department's progress in implementing
11 the administrative process established by this Act, the
12 department's utilization of the administrative process, and the
13 department's utilization of the assisted community treatment
14 process established pursuant to part VIII of chapter 334, Hawaii
15 Revised Statutes. The department shall submit the reports
16 required by this section annually, no later than twenty days
17 prior to the convening of each regular session. The department
18 shall submit its initial report as required by this Act no later
19 than twenty days prior to the convening of the regular session
20 of 2018 and shall submit its final report no later than twenty
21 days prior to the convening of the regular session of 2024.

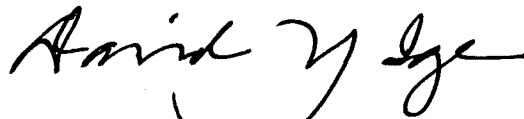


1 SECTION 6. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect on July 1, 2017, and
8 shall be repealed on June 30, 2024; provided that subsection (a)
9 of section 334E-2, Hawaii Revised Statutes, as amended by
10 section 3 of this Act, shall be reenacted in the form in which
11 it read on June 30, 2017.

APPROVED this 10 day of JUL , 2017



GOVERNOR OF THE STATE OF HAWAII

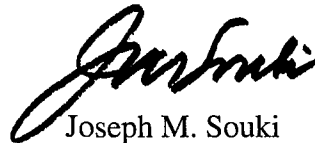


HB No. 554, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.


President of the Senate


Clerk of the Senate