

JAN 23 2025

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 Hawaii's mental
2 health laws provide the State with a variety of methods to help
3 and support individuals suffering from mental illness or
4 substance abuse. As the number of individuals in need of help
5 increases, so has the need to enhance these laws in a manner
6 that demystifies the complexities of existing procedures,
7 clarifies the circumstances under which action can be taken, and
8 bolsters available tools to best serve these individuals. Legal
9 mechanisms, such as emergency procedures, involuntary
10 hospitalization, assisted community treatment, and authorization
11 for the administration of treatment, enables the State and
12 mental health providers to provide compassionate assistance to
13 individuals suffering from mental illness or substance abuse
14 when they need it the most.

15 Accordingly, the purpose of this Act is to clarify, update,
16 and revise Hawaii's mental health laws by:

- 17 (1) Clarifying the procedures and expanding on the
18 circumstances available from initial contact with an

S.B. NO. 1322

individual suffering from mental illness or substance abuse to emergency transportation, examination, and hospitalization of the individual;

(2) Establishing liability limits for state and local governments and healthcare professionals under certain circumstances arising from emergency procedures;

(3) Expanding the notice requirements when an emergency hospitalization occurs to include an individual's healthcare surrogate, as well as clarifying when the individual can waive notice to the individual's family members;

(4) Removing the authority of the family court to appoint a legal guardian or conservator in a proceeding for involuntary hospitalization, thereby leaving appointments for legal guardians or conservators subject to the requirements of chapter 560, article V, Hawaii Revised Statutes;

(5) Removing the requirement that psychiatric facilities wait for responses from interested parties to a notice of intent to discharge a patient under involuntary hospitalization prior to discharging the patient;

S.B. NO. 1322

(6) Clarifying the circumstances under which a subject of an order for assisted community treatment can be administered medication over the subject's objection;

(7) Providing limits on liability for an assisted community treatment provider; and

(8) Modifying the requirements to obtain administrative authorization of medical treatment over the objection of a patient who is in the custody of the director and in a psychiatric facility, so that the treatment can be authorized by a single decision-maker who is a psychiatrist.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended as follows:

1. By adding to part IV a new subpart to be designated as subpart A and to read:

"A. Emergency Procedures

§334-A. Emergency procedures. The emergency procedures in this subpart shall consist of emergency transportation, emergency examination, and emergency hospitalization for individuals who may be mentally ill or suffering from substance abuse and imminently dangerous to self or others.

S.B. NO. 1322

§334-B Emergency transportation initiated by a law enforcement officer. (a) When a law enforcement officer has a reasonable suspicion that an individual is imminently dangerous to self or others and needs to be detained for emergency examination, the law enforcement officer shall contact a mental health emergency worker; provided that the law enforcement officer may temporarily detain the individual, if the law enforcement officer:

- (1) Is unable to reach a mental health emergency worker telephonically after three attempts;
- (2) Has reason to believe that the situation requires immediate intervention to prevent harm to the individual or others;
- (3) Contacts a mental health emergency worker at the earliest time possible; and
- (4) Documents the reasons why the situation necessitated that the individual be detained.

If the mental health emergency worker determines that the individual is mentally ill or suffering from substance abuse and is imminently dangerous to self or others, the law enforcement officer shall detain the individual for transportation to an emergency examination.

S.B. NO. 1322

1 (b) When a crisis intervention officer has probable cause
2 to believe that an individual is mentally ill or suffering from
3 substance abuse and is imminently dangerous to self or others,
4 the crisis intervention officer shall detain the individual for
5 transportation to an emergency examination. The crisis
6 intervention officer shall contact a mental health emergency
7 worker to determine the type of facility where the individual
8 shall be transported.

9 (c) Any individual detained under this section shall be
10 transported directly to a psychiatric facility or other facility
11 designated by the director, as determined by a mental health
12 emergency worker. A law enforcement officer shall make an
13 application for the emergency examination of the individual.
14 The application shall state in detail the circumstances under
15 which and reasons that the individual was taken into custody.
16 The application shall be transmitted with the individual to the
17 psychiatric facility or other facility designated by the
18 director and be made a part of the individual's clinical record.

19 (d) As used in this section, unless the context otherwise
20 requires, "crisis intervention officer" has the same meaning as
21 in section 353C-1."

S.B. NO. 1322

§334-C Emergency transportation initiated by a court order. Upon written or oral application of any licensed physician, advanced practice registered nurse, psychologist, attorney, member of the clergy, health or social service professional, or any state or county employee in the course of employment, a judge may issue a written or oral ex parte order:

(1) Stating that there is probable cause that the individual is:

(A) Mentally ill or suffering from substance abuse;

and

(B) Imminently dangerous to self or others;

(2) Stating the findings upon which the conclusion is based; and

(3) Directing that a law enforcement officer take the individual into custody and transport the individual directly to a psychiatric facility or other facility designated by the director for an emergency examination.

If an application was made orally, the person who made the application shall reduce the application to writing and submit it to the judge who issued the ex parte order by noon of the next court day after the order was issued. The written

S.B. NO. 1322

1 application shall be made under penalty of law but need not be
2 sworn before a notary public. If the judge issued an ex parte
3 order orally, the judge shall reduce the oral order to writing
4 by the close of the next court day after the order was issued.

5 The written ex parte order shall be transmitted with the
6 individual to the psychiatric facility or other facility
7 designated by the director and be made a part of the
8 individual's clinical record.

9 **§334-D Emergency transportation initiated by a health care**
10 **provider.** Any licensed physician, advanced practice registered
11 nurse, physician assistant, licensed clinical social worker, or
12 psychologist who has examined an individual and determines that
13 the individual is mentally ill or suffering from substance abuse
14 and is imminently dangerous to self or others, may direct a law
15 enforcement officer to detain and transport the individual, by
16 ambulance or other suitable means, to a psychiatric facility or
17 other facility designated by the director for an emergency
18 examination, and may administer treatment, within the examining
19 health care provider's scope of practice, as necessary for the
20 individual's safe transportation. The examining health care
21 provider shall provide a written statement of circumstances and
22 reasons necessitating the emergency examination. The written

S.B. NO. 1322

1 statement shall be transmitted with the individual to the
2 psychiatric facility or other facility designated by the
3 director and be made a part of the individual's clinical record.

4 **§334-E Emergency examination.** (a) A licensed physician,
5 medical resident under the supervision of a licensed physician,
6 or advanced practice registered nurse may conduct an initial
7 examination and screening of the patient, and administer such
8 treatment as indicated by good medical practice; provided that
9 the patient is further examined by a qualified psychiatric
10 examiner. A qualified psychiatric examiner shall conduct an
11 emergency examination of a patient transported under section
12 334-B, 334-C, or 334-D without unnecessary delay and provide the
13 patient with treatment, as is indicated by good medical
14 practice; provided that the emergency examination shall include
15 a screening to determine whether the patient meets the criteria
16 for involuntary hospitalization as provided in section 334-60.2.

17 (b) If, following an emergency examination of a patient
18 under subsection (a), a qualified psychiatric examiner
19 determines that the criteria for involuntary hospitalization do
20 not exist, the patient shall be discharged expeditiously;
21 provided that if the patient is not under an order for assisted
22 community treatment, a qualified psychiatric examiner shall

S.B. NO. 1322

1 conduct an examination pursuant to section 334-121.5 before the
2 discharge. A patient under criminal charges shall be returned
3 to the custody of a law enforcement officer.

4 **§334-F Emergency hospitalization.** (a) If, following an
5 emergency examination pursuant to section 334-E(a), a qualified
6 psychiatric examiner determines that the criteria for
7 involuntary hospitalization exist, the patient shall be
8 hospitalized on an emergency basis or be transferred to another
9 psychiatric facility or other facility designated by the
10 director for emergency hospitalization.

11 (b) The patient admitted under subsection (a) shall be
12 released within seventy-two hours of the patient's admission to
13 a psychiatric facility or other facility designated by the
14 director, unless:

15 (1) The patient voluntarily agrees to further
16 hospitalization, or

17 (2) A proceeding for court-ordered evaluation or
18 hospitalization is initiated as provided in section
19 334-60.3. If that time expires on a Saturday, Sunday,
20 or holiday, the time for initiation is extended to the
21 close of the next court day. Upon initiation of the

S.B. NO. 1322

1 proceeding the facility may detain the patient until
2 further order of the court.

3 (c) If at any time during the period of emergency
4 hospitalization a qualified psychiatric examiner determines that
5 a patient no longer meets the criteria for emergency
6 hospitalization, the patient shall be discharged expeditiously;
7 provided that if the patient is not under an order for assisted
8 community treatment, a qualified psychiatric examiner shall
9 conduct an examination pursuant to section 334-121.5 before the
10 discharge. A patient under criminal charges shall be returned
11 to the custody of a law enforcement officer.

12 (d) The patient shall have the right, immediately upon
13 emergency hospitalization, to telephone an attorney and the
14 patient's surrogate, guardian, family member including a
15 reciprocal beneficiary, or adult friend. The patient shall be
16 allowed to confer with an attorney in private.

17 **§334-G Notice of emergency transportation, examination,**
18 **and hospitalization.** Notice of an individual's emergency
19 transportation, examination, and hospitalization under this
20 subpart may be given to at least one of the following persons in
21 the following order of priority: the individual's spouse or
22 reciprocal beneficiary, legal parents, adult children,

S.B. NO. 1322

1 surrogate, legal guardian, or if none can be found, the closest
2 adult relative, as long as the individual:

3 (1) Has capacity to make health care decisions and
4 consents that notice may be given to at least one of
5 persons listed in this section;

6 (2) Is given the opportunity to object and does not
7 object, or the health care provider can reasonably
8 infer from the circumstances based on the exercise of
9 professional judgment that the individual does not
10 object; or

11 (3) Is incapacitated or an emergency circumstance exists,
12 and the health care provider determines based on the
13 exercise of professional judgment that giving
14 notification is in the best interest of the
15 individual.

16 The staff of the facility shall make reasonable efforts to
17 ensure that the patient's family, including a reciprocal
18 beneficiary, is notified of the emergency hospitalization,
19 unless the patient is an adult and waives notification.

20 **§334-H Immunity from liability.** The State, any county,
21 any private sector or nonprofit organization, and, except in
22 cases of willful misconduct, gross negligence, or recklessness,

S.B. NO. 1322

1 any state or county employee, health care provider, or mental
2 health professional shall not be held civilly liable, either
3 personally or in their official capacity, for the death of or
4 injury to the individual, claim for damage to or loss of
5 property, or other civil liability as the result of any act or
6 omission in the course of the employment or duties under this
7 subpart."

8 2. By designating section 334-60.1 as subpart B and
9 inserting a title before section 334-60.1 to read:

10 "B. Voluntary Admission"

11 3. By designating section 334-60.2 to 334-60.7 as subpart
12 C and inserting a title before section 334-60.2 to read:

13 "C. Involuntary Hospitalization"

14 4. By designating section 334-61 to 334-62 as subpart D
15 and inserting a title before section 334-61 to read:

16 "D. General Provisions"

17 SECTION 3. Chapter 334, Hawaii Revised Statutes, is
18 amended by adding to part VIII a new section to be appropriately
19 designated and to read as follows:

20 "§334- Records and disclosure of information. (a) A
21 treatment provider who provided or is providing medical,
22 psychiatric, therapeutic, or social services treatment to an

S.B. NO. 1322

individual shall provide relevant treatment information, if
available, to the department of the attorney general upon the
department's request for the purpose of preparing a petition for
assisted community treatment. The treatment information may
include a certificate issued pursuant to section 334-123(b), a
treatment plan prepared pursuant to section 334-126(g), records
related to actions or proceedings pursuant to part IV of this
chapter, records relating to the individual's treatment history,
and other records deemed relevant by the individual's treatment
provider.

(b) The petitioner of an assisted community treatment
order, the department of the attorney general, and the family
court shall disclose an assisted community treatment order of a
subject of the order to state and county law enforcement
agencies, assisted community treatment provider, or any other
entity necessary to carry out the terms of the subject's
assisted community treatment order."

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

1. By adding two new definitions to be appropriately
inserted and to read:

S.B. NO. 1322

1 "Qualified psychiatric examiner" means a licensed
2 psychiatrist or advanced practice registered nurse who has
3 prescriptive authority and who holds an accredited national
4 certification in an advanced practice registered nurse
5 psychiatric specialization.

6 "Surrogate" means a person appointed:

7 (1) Under a power of attorney for health care to make a
8 health-care decision for the individual who made the
9 appointment; or

10 (2) Under law or court order to make health-care decisions
11 for an individual."

12 2. By amending the definition of "patient" to read:

13 "Patient" means [~~a person~~] an individual under
14 observation, care, or treatment at a psychiatric facility[?] or
15 other facility designated by the director."

16 3. By amending the definition of "treatment" to read:

17 "Treatment" means the broad range of emergency, out-
18 patient, intermediate, domiciliary, and inpatient services and
19 care, including diagnostic evaluation, medical, psychiatric,
20 psychological, and social service care, vocational
21 rehabilitation, psychosocial rehabilitation, career counseling,

S.B. NO. 1322

1 and other special services [~~which~~] that may be extended to
2 [~~handicapped persons.~~] an individual with a disability."

3 SECTION 5. Section 334-60.2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§334-60.2 Involuntary hospitalization criteria. [A
6 ~~person~~] An individual may be committed to a psychiatric facility
7 for involuntary hospitalization, if the court finds:

8 (1) That the [~~person~~] individual is mentally ill or
9 suffering from substance abuse;

10 (2) That the [~~person~~] individual is imminently dangerous
11 to self or others; and

12 (3) That the [~~person~~] individual is in need of care or
13 treatment, or both, and there is no suitable
14 alternative available through existing facilities and
15 programs which would be less restrictive than
16 hospitalization."

17 SECTION 6. Section 334-60.3, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§334-60.3 Initiation of proceeding for involuntary
20 hospitalization. (a) Any person may file a petition alleging
21 that [~~a person located in the county~~] an individual meets the
22 criteria for commitment to a psychiatric facility[?] as provided

S.B. NO. 1322

1 in section 334-60.2. The petition shall be filed in the county
2 where the individual resides and executed subject to the
3 penalties of ~~[perjury]~~ law but need not be sworn to before a
4 notary public. The ~~[attorney general, the attorney general's~~
5 ~~deputy, special deputy, or appointee designated to present the~~
6 ~~case]~~ department of the attorney general shall assist the
7 petitioner to state the substance of the petition in plain and
8 simple language. The petition may be accompanied by a
9 certificate of the ~~[licensed physician, advanced practice~~
10 ~~registered nurse,]~~ qualified psychiatric examiner or
11 psychologist who has examined the ~~[person]~~ individual within two
12 days before ~~[submission of]~~ the petition~~[,]~~ is filed, unless the
13 ~~[person]~~ individual whose commitment is sought has refused to
14 submit to medical or psychological examination, in which case
15 the fact of refusal shall be alleged in the petition. The
16 certificate shall set forth the signs and symptoms relied upon
17 by the ~~[physician, advanced practice registered nurse,]~~
18 qualified psychiatric examiner or psychologist to determine the
19 ~~[person]~~ individual is in need of ~~[care or]~~ treatment~~[, or~~
20 ~~both,]~~ and whether the ~~[person]~~ individual is capable of
21 realizing and making a rational decision with respect to the
22 ~~[person's]~~ individual's need for treatment. If the petitioner

S.B. NO. 1322

1 believes that further ~~[evaluation]~~ examination is necessary
2 before commitment, the petitioner may request ~~[such]~~ the further
3 ~~[evaluation.]~~ examination.

4 (b) In the event the subject of the petition has been
5 given an examination, evaluation, or treatment in a psychiatric
6 facility within five days before submission of the petition, and
7 hospitalization is recommended by the staff of the facility, the
8 petition may be accompanied by the administrator's certificate
9 in lieu of a ~~[physician]~~ qualified psychiatric examiner's or
10 psychologist's certificate.

11 (c) The petition shall include the name, address, and
12 telephone number of at least one of the following persons in the
13 following order of priority: the subject of the petition's
14 spouse or reciprocal beneficiary, legal parents, adult children,
15 surrogate, and legal guardian ~~[, if one has been appointed]~~. If
16 the subject of the petition has no living spouse or reciprocal
17 beneficiary, legal parent, adult ~~[children,]~~ child, surrogate,
18 or legal guardian, ~~[or if none can be found,]~~ notice shall be
19 served on at least one of the subject's closest adult relatives,
20 if any can be found."

21 SECTION 7. Section 334-60.4, Hawaii Revised Statutes, is
22 amended by amending subsections (a) to (c) to read as follows:

S.B. NO. 1322

1 "(a) The court shall set a hearing on the petition and
2 notice of the time and place of the hearing shall be served in
3 accordance with, and to those persons specified in, a current
4 order of commitment. If there is no current order of
5 commitment, notice of the hearing shall be served personally on
6 the subject of the petition and served personally or by
7 certified or registered mail, return receipt requested,
8 deliverable to the addressee only, on the subject's spouse or
9 reciprocal beneficiary, legal parents, adult children,
10 surrogate, and legal guardian[, ~~if one has been appointed~~]. If
11 the subject of the petition has no living spouse or reciprocal
12 beneficiary, legal parent, adult [~~children,~~] child, surrogate,
13 or legal guardian, or if none can be found, notice of the
14 hearing shall be served on at least one of the subject's closest
15 adult relatives, if any can be found. Notice of the hearing to
16 the subject's spouse or reciprocal beneficiary, legal parents,
17 adult children, or closest adult relative may be waived if the
18 subject is an adult and requests that they not be notified.
19 Notice of the hearing shall also be served on the public
20 defender, attorney for the subject of the petition, or other
21 court-appointed attorney [~~as the case may be~~]. If the subject
22 of the petition is a minor, notice of the hearing shall also be

S.B. NO. 1322

1 served upon the person who has had the principal care and
2 custody of the minor during the sixty days preceding the date of
3 the petition, if that person can be found within the State.
4 Notice shall also be given to other persons as the court may
5 designate.

6 (b) The notice shall include the following:

7 (1) The date, time, place of hearing, a clear statement of
8 the purpose of the proceedings and of possible
9 consequences to the subject ~~[7]~~ of the petition, and a
10 statement of the legal standard upon which commitment
11 is authorized;

12 (2) A copy of the petition;

13 (3) A ~~[written notice,]~~ statement, in plain and simple
14 language, that the subject may waive the hearing by
15 voluntarily agreeing to hospitalization ~~[7]~~ or, with
16 the approval of the court, to some other form of
17 treatment;

18 (4) A filled-out form indicating ~~[such]~~ the waiver;

19 (5) A ~~[written notice,]~~ statement, in plain and simple
20 language, that the subject or the subject's surrogate,
21 guardian, or representative may apply at any time for
22 a hearing on the issue of the subject's need for

S.B. NO. 1322

1 hospitalization, if the subject has previously waived
2 such a hearing;

3 (6) [Notice] A statement that the subject is entitled to
4 the assistance of an attorney and that the public
5 defender has been notified of these proceedings; and

6 (7) [Notice] A statement that if the subject does not want
7 to be represented by the public defender, the subject
8 may contact the subject's own attorney. [~~and~~

9 ~~(8) If applicable, notice that the petitioner intends to~~
10 ~~adduce evidence to show that the subject of the~~
11 ~~petition is an incapacitated or protected person, or~~
12 ~~both, under article V of chapter 560, and whether~~
13 ~~appointment of a guardian is sought at the hearing.~~
14 ~~If appointment of a guardian is to be recommended, and~~
15 ~~a nominee is known at the time the petition is filed,~~
16 ~~the identity of the nominee shall be disclosed.]~~

17 (c) If the subject of the petition executes and files a
18 waiver of the hearing, upon acceptance by the court following a
19 court determination that the [person] subject understands the
20 [person's] subject's rights and is competent to waive them, the
21 court shall order the subject to be committed to a facility that
22 has agreed to admit the subject as an involuntary patient or, if

S.B. NO. 1322

1 the subject is at such a facility, that the subject be retained
2 there."

3 SECTION 8. Section 334-60.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§334-60.5 Hearing on petition.** (a) The court shall
6 adjourn or continue a hearing for failure to timely notify the
7 subject of the petition's spouse or reciprocal beneficiary,
8 legal ~~[parents,]~~ parent, adult ~~[children,]~~ child, surrogate,
9 guardian, or relative, or other person determined by the court
10 to be entitled to notice, or for failure by the subject to
11 contact an attorney as provided in section 334-60.4(b) (7) unless
12 the subject waived notice pursuant to section 334-60.4(a) or the
13 court determines that the interests of justice require that the
14 hearing continue without adjournment or continuance.

15 (b) The time and form of the procedure incident to hearing
16 the issues in the petition shall be provided by court rule.
17 Unless the hearing is waived, the judge shall hear the petition
18 as soon as possible and no later than ten days after the date
19 the petition is filed unless a reasonable delay is sought for
20 good cause shown by the subject of the petition, the subject's
21 attorney, or those persons entitled to receive notice of the
22 hearing under section 334-60.4.

S.B. NO. 1322

1 (c) The subject of the petition shall be present at all
2 hearings unless the subject waives the right to be present, is
3 unable to attend, or creates conditions that make it impossible
4 to conduct ~~[the]~~ a hearing in a reasonable manner as determined
5 by the judge. A waiver is valid only upon acceptance by the
6 court following a judicial determination that the subject
7 understands the subject's rights and is competent to waive them,
8 or is unable to participate. If the subject is unable to
9 participate, the judge shall appoint a guardian ad litem or a
10 temporary guardian as provided in article V of chapter 560, to
11 represent the subject throughout the proceedings.

12 (d) Hearings may be held at any convenient place within
13 the circuit. Unless the court determines personal appearance is
14 necessary, hearings may be conducted by video conferencing. The
15 subject of the petition, any interested party, or the court on
16 its own motion may request a hearing in another circuit because
17 of convenience to the parties, witnesses, or the court or
18 because of the ~~[individual's]~~ subject's mental or physical
19 condition.

20 (e) The ~~[attorney general, the attorney general's deputy,~~
21 ~~special deputy, or appointee]~~ department of the attorney general
22 shall present the case for a petitioner for hearings convened

S.B. NO. 1322

1 under this chapter, unless ~~[except that the attorney general,~~
2 ~~the attorney general's deputy, special deputy, or appointee need~~
3 ~~not participate in or be present at a hearing whenever]~~ a
4 petitioner ~~[or some other appropriate person]~~ has retained
5 private counsel who will be present in court and will present to
6 the court the case for involuntary hospitalization.

7 (f) Counsel for the subject of the petition shall be
8 allowed adequate time for investigation of the matters at issue
9 and for preparation~~[,]~~ and shall be permitted to present the
10 evidence that the counsel believes necessary to a proper
11 disposition of the proceedings, including evidence as to
12 alternatives to inpatient hospitalization.

13 (g) No individual may be found to require treatment in a
14 psychiatric facility unless at least one ~~[physician, advanced~~
15 ~~practice registered nurse,]~~ qualified psychiatric examiner or
16 psychologist who has personally examined the individual
17 testifies in person at the hearing. This testimony may be
18 waived by the subject of the petition. If the subject of the
19 petition ~~[has refused]~~ refuses to be examined by a ~~[licensed~~
20 ~~physician, advanced practice registered nurse,]~~ qualified
21 psychiatric examiner or psychologist, the subject may be
22 examined by a court-appointed ~~[licensed physician, advanced~~

S.B. NO. 1322

1 ~~practice registered nurse,~~ qualified psychiatric examiner or
2 psychologist. If the subject refuses to be examined and there
3 is sufficient evidence to believe that the allegations of the
4 petition are true, the court may make a temporary order
5 committing the subject to a psychiatric facility for a period of
6 no more than five days for the purpose of a diagnostic
7 examination ~~[and evaluation]~~. The subject's refusal to be
8 examined shall be treated as a denial that the subject is
9 mentally ill or suffering from substance abuse. Nothing in this
10 section shall limit the ~~[individual's]~~ subject's privilege
11 against self-incrimination.

12 (h) The subject of the petition in a hearing under this
13 section has the right to secure an independent ~~[medical or~~
14 ~~psychological evaluation]~~ examination and present evidence
15 thereon.

16 (i) If after hearing all relevant evidence, including the
17 result of any diagnostic examination ordered by the court, the
18 court finds that ~~[an individual]~~ a subject of a petition is not
19 a person requiring medical, psychiatric, psychological, or other
20 rehabilitative treatment or supervision, the court shall order
21 that the ~~[individual]~~ subject be discharged if the ~~[individual]~~
22 subject has been hospitalized prior to the hearing.

S.B. NO. 1322

(j) If the court finds that the criteria for involuntary hospitalization under section 334-60.2(1) has been met beyond a reasonable doubt and that the criteria under ~~[sections]~~ section 334-60.2(2) and ~~[334-60.2(3)]~~ (3) have been met by clear and convincing evidence, the court may issue an order to any law enforcement officer to ~~[deliver]~~ transport the subject of the order to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. The court may also authorize the involuntary administration of medication, where the subject has an existing order for assisted community treatment~~[,]~~ issued pursuant to part VIII of this chapter~~[, relating to assisted community treatment,]~~ and in accordance with the treatment prescribed by that ~~[prior]~~ existing order. Notice of the subject's commitment and the facility name and location where the subject will be committed shall be provided to those persons entitled to notice pursuant to section 334-60.4. An order of commitment shall specify which of those persons served with notice pursuant to section 334-60.4, together with such other persons as the court may designate, shall be entitled to receive any subsequent

S.B. NO. 1322

1 notice of intent to discharge, transfer, or recommit. The court
2 shall forward to the Hawaii criminal justice data center all
3 orders of involuntary civil commitment or information from all
4 orders of involuntary civil commitment, as requested by the
5 Hawaii criminal justice data center, which in turn shall forward
6 the information to the Federal Bureau of Investigation, or its
7 successor agency, for inclusion in the National Instant Criminal
8 Background Check System database. The orders or information
9 shall also be maintained by the Hawaii criminal justice data
10 center for disclosure to and use by law enforcement officials
11 for the purpose of firearms permitting, licensing, or
12 registration pursuant to chapter 134. This subsection shall
13 apply to all involuntary civil commitments without regard to the
14 date of the involuntary civil commitment.

15 ~~[(k) The court may find that the subject of the petition~~
16 ~~is an incapacitated or protected person, or both, under article~~
17 ~~V of chapter 560, and may appoint a guardian or conservator, or~~
18 ~~both, for the subject under the terms and conditions as the~~
19 ~~court shall determine.~~

20 ~~-(l)]~~ (k) Persons entitled to notice [are] pursuant to this
21 section shall be also entitled to be present in the courtroom
22 for the hearing and to receive a copy of the hearing transcript

S.B. NO. 1322

1 or recording, unless the court determines that the interests of
2 justice require otherwise."

3 SECTION 9. Section 334-60.7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§334-60.7 Notice of intent to discharge. (a) When the
6 administrator, the administrator's deputy, or the attending
7 physician of a psychiatric facility contemplates discharge of an
8 involuntary patient because of expiration of the court order for
9 commitment or because the patient is no longer a proper subject
10 for commitment, as determined by the criteria for involuntary
11 hospitalization in section 334-60.2, the administrator, the
12 administrator's deputy, or the attending physician shall provide
13 notice of intent to discharge, or if the patient voluntarily
14 agrees to further hospitalization, the administrator, the
15 administrator's deputy, or the attending physician shall provide
16 notice of the patient's admission to voluntary inpatient
17 treatment. The following requirements and procedures shall
18 apply:

- 19 (1) The notice and a certificate of service shall be filed
20 with the family court and served on those persons whom
21 the order of commitment specifies as entitled to
22 receive notice, by mail at the person's last known

S.B. NO. 1322

1 address. [Notice] If the commitment resulted directly
2 from legal proceedings under chapter 704 or 706,
3 notice shall also be sent to the prosecuting attorney
4 of the county from which the person was originally
5 committed, by facsimile or electronically, for the
6 sole purpose of victim notification; and

7 (2) Any person specified as entitled to receive notice may
8 waive this right in writing with the psychiatric
9 facility[+]

10 ~~(3) If no objection is filed within five calendar days of~~
11 ~~mailing the notice, the administrator or attending~~
12 ~~physician of the psychiatric facility shall discharge~~
13 ~~the patient or accept the patient for voluntary~~
14 ~~inpatient treatment;~~

15 ~~(4) If any person specified as entitled to receive notice~~
16 ~~files a written objection, with a certificate of~~
17 ~~service, to the discharge or to the patient's~~
18 ~~admission to voluntary inpatient treatment on the~~
19 ~~grounds that the patient is a proper subject for~~
20 ~~commitment, the family court shall conduct a hearing~~
21 ~~as soon as possible, prior to the termination of the~~
22 ~~current commitment order, to determine if the patient~~

S.B. NO. 1322

~~still meets the criteria for involuntary hospitalization in section 334 60.2. The person filing the objection shall also notify the psychiatric facility by telephone on the date the objection is filed;~~

~~(5) If the family court finds that the patient does not meet the criteria for involuntary hospitalization in section 334 60.2, the court shall issue an order of discharge from the commitment; and~~

~~(6) If the family court finds that the patient does meet the criteria for involuntary hospitalization in section 334 60.2, the court shall issue an order denying discharge from the commitment].~~

(b) For civil commitments that do not result directly from legal proceedings under ~~[chapters]~~ chapter 704 ~~[and]~~ or 706, when the administrator, the administrator's deputy, or the attending physician of a psychiatric facility contemplates discharge of an involuntary patient, the administrator, the administrator's deputy, or the attending physician ~~[may]~~ shall assess whether an assisted community treatment plan is indicated pursuant to section 334-123 and, if so indicated, may

S.B. NO. 1322

1 communicate with an aftercare provider as part of discharge
2 planning, as appropriate."

3 SECTION 10. Section 334-76, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§334-76 Discharge from custody. (a) Subject to any
6 special requirements of law as provided in sections 704-406,
7 704-411, and 706-607 or elsewhere, with respect to patients
8 committed on court order from a criminal proceeding, the
9 administrator of a psychiatric facility, the administrator's
10 deputy, or the attending physician, pursuant to section 334-
11 60.7, shall:

12 (1) Send a notice of intent to discharge or notice of the
13 patient's admission to voluntary inpatient treatment
14 to those persons specified in the order of commitment
15 as entitled to receive notice of intent to discharge,
16 by mail at their last known address; and

17 (2) Send a notice of intent to discharge or notice of the
18 patient's admission to voluntary inpatient treatment
19 to the prosecuting attorney of the county from which
20 the person was originally committed, by facsimile or
21 electronically[-], when the commitment directly

S.B. NO. 1322

1 resulted from legal proceedings under chapter 704 or
2 706.

3 (b) The administrator ~~[or]~~, the administrator's deputy, or
4 the physician assuming medical responsibility for the patient
5 shall discharge an involuntary patient when the patient is no
6 longer a proper subject for commitment, as determined by the
7 criteria for involuntary hospitalization in section 334-60.2.

8 (c) Nothing in this section shall preclude a psychiatric
9 facility from accepting for voluntary inpatient treatment, in
10 accordance with the procedures in section 334-60.1, a patient
11 for whom the facility contemplates discharge pursuant to section
12 334-60.7 and who voluntarily agrees to further hospitalization
13 after the period of commitment has expired or where the patient
14 is no longer a proper subject for commitment."

15 SECTION 11. Section 334-121, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§334-121 Criteria for assisted community treatment.** [A
18 ~~person~~] An individual may be ordered to obtain assisted
19 community treatment if the family court finds, based on the
20 professional opinion of a ~~[psychiatrist or advanced practice~~
21 ~~registered nurse with prescriptive authority and who holds an~~
22 ~~accredited national certification in an advanced practice~~

S.B. NO. 1322

1 ~~registered nurse psychiatric specialization,~~ qualified
2 psychiatric examiner, that:

3 (1) The ~~[person]~~ individual is mentally ill or suffering
4 from substance abuse;

5 (2) The ~~[person]~~ individual is unlikely to live safely in
6 the community without available supervision, is now in
7 need of treatment in order to prevent a relapse or
8 deterioration that would predictably result in the
9 ~~[person]~~ individual becoming imminently dangerous to
10 self or others, and the ~~[person's]~~ individual's
11 current mental status or the nature of the ~~[person's]~~
12 individual's disorder limits or negates the ~~[person's]~~
13 individual's ability to make an informed decision to
14 voluntarily seek or comply with recommended treatment;

15 (3) The ~~[person]~~ individual has a:

16 (A) Mental illness that has caused that ~~[person]~~
17 individual to refuse needed and appropriate
18 mental health services in the community; or

19 (B) History of lack of adherence to treatment for
20 mental illness or substance abuse that resulted
21 in the ~~[person]~~ individual becoming dangerous to
22 self or others and that now would predictably

S.B. NO. 1322

1 result in the [person] individual becoming
 2 imminently dangerous to self or others; and
 3 (4) Considering less intrusive alternatives, assisted
 4 community treatment is essential to prevent the danger
 5 posed by the [person,] individual, is medically
 6 appropriate, and is in the [person's] individual's
 7 medical interests."

8 SECTION 12. Section 334-121.5, Hawaii Revised Statutes, is
 9 amended to read as follows:

10 "§334-121.5 Examination for assisted community treatment
 11 indication. A [~~licensed psychiatrist or advanced practice~~
 12 ~~registered nurse with prescriptive authority and who holds an~~
 13 ~~accredited national certification in an advanced practice~~
 14 ~~registered nurse psychiatric specialization~~] qualified
 15 psychiatric examiner associated with the [~~licensed~~] psychiatric
 16 facility where [a person] a patient is located who was committed
 17 to involuntary hospitalization, delivered for emergency
 18 examination or emergency hospitalization, or voluntarily
 19 admitted to inpatient treatment at a psychiatric facility
 20 pursuant to part IV shall, before the [person's] patient's
 21 discharge, examine the [person] patient to determine whether an
 22 assisted community treatment plan is indicated pursuant to this

S.B. NO. 1322

1 part. If a plan is indicated, the [~~psychiatrist or advanced~~
2 ~~practice registered nurse~~] qualified psychiatric examiner shall
3 prepare the certificate specified by section 334-123. The
4 department of the attorney general shall assist with the
5 preparation and filing of any petition brought pursuant to
6 section 334-123 and with the presentation of the case at any
7 related court proceedings; provided that, if the petitioner is a
8 private provider or other private individual, the petitioner may
9 decline the assistance. The psychiatric facility may notify
10 another mental health program for assistance with the
11 coordination of care in the community for the person. Nothing
12 in this section shall delay the appropriate discharge of a
13 [~~person~~] patient from the psychiatric facility after the
14 examination for assisted community treatment indication has been
15 completed."

16 SECTION 13. Section 334-122, Hawaii Revised Statutes, is
17 amended to be read as follows:

18 1. By adding two new definitions to be appropriately
19 inserted and to read:

20 "Assisted community treatment provider" means a mental
21 health provider, which may include a qualified psychiatric
22 examiner or a mental health program, that is or will be

S.B. NO. 1322

1 responsible, in accordance with an assisted community treatment
2 order, for the coordination, management, or administration of a
3 subject of the order's treatment.

4 "Mental health program" means a hospital, psychiatric
5 facility, clinic, or other facility providing mental health
6 treatment to individuals suffering from mental illness or
7 substance abuse."

8 2. By amending the definition of "assisted community
9 treatment" to read:

10 "Assisted community treatment" includes medication
11 specifically authorized by court order; individual or group
12 therapy; day or partial day programming activities; services and
13 training, including educational and vocational activities;
14 supervision of living arrangements; and any other services
15 prescribed to either alleviate the ~~[person's]~~ subject of the
16 order's disorder or disability, maintain or maximize semi-
17 independent functioning, or prevent further deterioration that
18 may reasonably be predicted to result in the need for
19 hospitalization or more intensive or restrictive levels of care
20 in the community or incarceration for criminal behavior."

21 3. By amending the definition of "subject of the order" to
22 read:

S.B. NO. 1322

1 ""Subject of the order" means [~~a person~~] an individual who
2 has been ordered by the court to obtain assisted community
3 treatment."

4 4. By amending the definition of "subject of the petition"
5 to read:

6 ""Subject of the petition" means the [~~person~~] individual
7 who, under a petition filed under section 334-123, is alleged to
8 meet the criteria for assisted community treatment."

9 5. By repealing the definition of "advanced practice
10 registered nurse".

11 [~~"Advanced practice registered nurse" means a registered~~
12 ~~nurse licensed to practice in this State who:~~

13 ~~(1) Has met the qualifications set forth in chapter 457~~
14 ~~and this part;~~

15 ~~(2) Because of advanced education and specialized clinical~~
16 ~~training, is authorized to assess, screen, diagnose,~~
17 ~~order, utilize, or perform medical, therapeutic,~~
18 ~~preventive, or corrective measures;~~

19 ~~(3) Holds an accredited national certification in an~~
20 ~~advanced practice registered nurse psychiatric~~
21 ~~specialization; and~~

S.B. NO. 1322

1 ~~(4) Holds prescriptive authority pursuant to section 457-~~
2 ~~8.6."~~]

3 6. By repealing the definition of "treating psychiatrist".

4 ~~[""Treating psychiatrist" means the psychiatrist who is~~
5 ~~responsible for the management and supervision of a person's~~
6 ~~treatment under order of the court."]~~

7 SECTION 14. Section 334-123, Hawaii Revised Statutes, is
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) The petition may be accompanied by a certificate of a
10 ~~[licensed psychiatrist or advanced practice registered nurse~~
11 ~~with prescriptive authority and who holds an accredited national~~
12 ~~certification in an advanced practice registered nurse~~
13 ~~psychiatric specialization]~~ qualified psychiatric examiner who
14 has examined the subject of the petition within twenty calendar
15 days before the filing of the petition. For purposes of the
16 petition, an examination shall be considered valid so long as
17 the ~~[licensed psychiatrist or advanced practice registered nurse~~
18 ~~with prescriptive authority and who holds an accredited national~~
19 ~~certification in an advanced practice registered nurse~~
20 ~~psychiatric specialization]~~ qualified psychiatric examiner has
21 obtained enough information from the subject of the petition to
22 reach a diagnosis of the subject of the petition, and to express

S.B. NO. 1322

1 a professional opinion concerning the same, even if the subject
2 of the petition is not fully cooperative. If the petitioner
3 believes that further ~~[evaluation]~~ examination is necessary
4 before treatment, the petitioner may request further
5 ~~[evaluation-]~~ examination.

6 (d) The petition shall include the name, address, and
7 telephone number of at least one of the following persons in the
8 following order of priority: the subject of the petition's
9 spouse or reciprocal beneficiary, legal parents, adult children,
10 ~~[and]~~ surrogate, or legal guardian~~[, if one has been~~
11 ~~appointed]~~. If the subject of the petition has no living spouse
12 or reciprocal beneficiary, legal parent, adult ~~[children,~~
13 child, surrogate, or legal guardian, or if none can be found,
14 the petition shall include the name, address, and telephone
15 number of at least one of the subject's closest adult relatives,
16 if any can be found. The petition shall also include the name
17 of a proposed assisted community treatment provider."

18 SECTION 15. Section 334-124, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§334-124 Hearing date.** The family court shall set a
21 hearing date on a petition, and any subsequent hearing dates for
22 the petition, as soon as possible~~[-]~~ but no later than ten days

S.B. NO. 1322

1 after the filing of the petition. A hearing on the petition may
2 be continued pending further examination of the subject of the
3 petition, for the appointment of a guardian ad litem, or for
4 good cause."

5 SECTION 16. Section 334-125, Hawaii Revised Statutes, is
6 amended to read as follows:

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

8 "(a) Notice of the hearing under this part shall be:

- 9 (1) Served personally on the subject of the petition
10 pursuant to family court rules;
- 11 (2) Served personally or by certified or registered mail,
12 return receipt requested, deliverable to the addressee
13 only, to as many as are known to the petitioner of the
14 subject's spouse or reciprocal beneficiary, legal
15 parents, adult children, surrogate, and legal
16 guardian[, ~~if one has been appointed~~]. If the subject
17 of the petition has no living spouse or reciprocal
18 beneficiary, legal parent, adult [~~children,~~] child,
19 surrogate, or legal guardian, or if none can be found,
20 notice of the hearing shall be served on at least one
21 of the subject's closest adult relatives, if any can
22 be found;

S.B. NO. 1322

(3) Served on the guardian ad litem appointed for the subject of the petition ~~[or the subject's existing guardian, if the court determines the existence of one,]~~ as provided in section 334-123.5;

(4) Served on the attorney for the subject of the petition, if applicable; ~~[and]~~

(5) Served on the assisted community treatment provider proposed in the petition, unless the petitioner is also the proposed assisted community treatment provider; and

~~[(5)]~~ (6) Given to other persons as the court may designate."

2. By amending subsection (c) to read:

"(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.]~~ to the subject of the petition's spouse or reciprocal beneficiary, legal parents, adult children, or closest adult relative may be waived if the subject is an adult and requests that they not be notified."

S.B. NO. 1322

SECTION 17. Section 334-126, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) No subject of the petition shall be ordered to receive assisted community treatment unless at least one ~~[psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization testifies in person at the hearing]~~ qualified psychiatric examiner who has personally ~~[assessed]~~ examined the subject ~~[7]~~ within a reasonable time before the filing of the petition ~~[up to the time when the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization]~~ provides oral testimony at ~~[court.]~~ the hearing. The ~~[testimony of the psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization]~~ qualified psychiatric examiner shall ~~[state]~~ provide the facts ~~[which]~~ that support the allegation that the subject meets all the criteria for assisted community treatment, provide a written treatment plan, which shall include

S.B. NO. 1322

1 non-mental health treatment if appropriate, provide the
2 rationale for the recommended treatment, and identify the
3 ~~[designated mental health program responsible for the~~
4 ~~coordination of care.]~~ assisted community treatment provider.

5 If the recommended assisted community treatment includes
6 medication, the testimony ~~[of]~~ provided by the ~~[psychiatrist or~~
7 ~~advanced practice registered nurse with prescriptive authority~~
8 ~~and who holds an accredited national certification in an~~
9 ~~advanced practice registered nurse psychiatric specialization]~~
10 qualified psychiatric examiner shall describe the types or
11 classes of medication ~~[which]~~ that should be authorized, and
12 describe the physical and mental beneficial and detrimental
13 effects of ~~[such]~~ the medication."

14 SECTION 18. Section 334-127, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§334-127 Disposition.** (a) If, after ~~[hearing]~~
17 considering all relevant evidence, including the results of any
18 diagnostic examination ordered by the family court, the family
19 court finds that the subject of the petition does not meet the
20 criteria for assisted community treatment, the family court
21 shall dismiss the petition. Notice of the dismissal shall be

S.B. NO. 1322

1 provided to those persons entitled to notice pursuant to section
2 334-125.

3 (b) If, after hearing all relevant evidence, including the
4 results of any diagnostic examination ordered by the family
5 court, the family court finds that the criteria for assisted
6 community treatment under section 334-121(1) have been met
7 beyond a reasonable doubt and that the criteria under section
8 334-121(2) to (4) have been met by clear and convincing
9 evidence, the family court shall order the subject to obtain
10 assisted community treatment for a period of no more than two
11 years. The written treatment plan submitted pursuant to section
12 334-126(g) shall be attached to the order and made a part of the
13 order.

14 If the family court finds by clear and convincing evidence
15 that the beneficial mental and physical effects of recommended
16 medication outweigh the detrimental mental and physical effects,
17 if any, the order may authorize types or classes of medication
18 to be included in treatment at the discretion of the ~~[treating~~
19 ~~psychiatrist or advanced practice registered nurse with~~
20 ~~prescriptive authority and who holds an accredited national~~
21 ~~certification in an advanced practice registered nurse~~

S.B. NO. 1322

1 ~~psychiatric specialization.]~~ assisted community treatment
2 provider.

3 The court order shall [~~also~~] state who should receive
4 notice of intent to discharge early in the event that the
5 [~~treating psychiatrist or advanced practice registered nurse~~
6 ~~with prescriptive authority and who holds an accredited national~~
7 ~~certification in an advanced practice registered nurse~~
8 ~~psychiatric specialization]~~ assisted community treatment
9 provider determines, before the end of the court ordered period
10 of treatment, that the subject should be discharged early from
11 assisted community treatment.

12 Notice of the order shall be provided to the director, the
13 [~~interested party who filed the petition,~~] petitioner, and those
14 persons entitled to notice pursuant to section 334-125.

15 (c) The family court shall also designate on the order the
16 [~~treating psychiatrist or advanced practice registered nurse~~
17 ~~with prescriptive authority and who holds an accredited national~~
18 ~~certification in an advanced practice registered nurse~~
19 ~~psychiatric specialization who is to be responsible for the~~
20 ~~management and supervision of the subject's treatment, or shall~~
21 ~~assign an administrator of a designated mental health program~~
22 ~~to, in turn, designate the treating psychiatrist or advanced~~

S.B. NO. 1322

~~practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization during the treatment period without court approval, and may designate either a publicly employed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization, or a private psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization; provided that the private psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization shall agree to the designation. The order for assisted community treatment shall be subject to the Health Care Privacy Harmonization Act, chapter 323B.]~~ assisted community treatment provider.

(d) Nothing in this section shall preclude the subject's stipulation to the continuance [+]of[+] an existing court order."

S.B. NO. 1322

SECTION 19. Section 334-129, Hawaii Revised Statutes, is amended to read as follows:

"§334-129 Failure to comply with assisted community treatment. (a) A ~~[treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization]~~ qualified psychiatric examiner may prescribe or administer to the subject of the order reasonable and appropriate medication or medications, if specifically authorized by ~~[the]~~ a court order, and treatment that is consistent with accepted medical standards and the ~~[family]~~ court order, including the written treatment plan submitted pursuant to section 334-126(g) ~~[-]~~, and in accordance with the procedures described in subsection (b).

(b) ~~[No subject of the order shall be physically forced to take medication under a family court order for assisted community treatment unless the subject is within an emergency department or admitted to a hospital, subsequent to the date of the current assisted community treatment order.]~~ A qualified psychiatric examiner may administer medication or medications specifically authorized by a court order to a subject of the order over objection of the subject during emergency examination

S.B. NO. 1322

1 or hospitalization under part IV, subpart A, of this chapter, or
2 while committed for involuntary hospitalization under part IV,
3 subpart C, of this chapter.

4 (c) A subject of the order may be transported to [a
5 ~~designated mental health program, or a hospital emergency~~
6 ~~department,~~] a psychiatric facility or other facility designated
7 by the director for failure to comply with an order for assisted
8 community treatment via the following methods:

9 (1) By an interested party with the consent of the subject
10 of the order; or

11 (2) In accordance with section [~~334-59.~~] 334-B, 334-C, or
12 334-D.

13 (d) The [~~designated mental health program's treating~~
14 ~~psychiatrist or advanced practice registered nurse with~~
15 ~~prescriptive authority and who holds an accredited national~~
16 ~~certification in an advanced practice registered nurse~~
17 ~~psychiatric specialization or designee of the psychiatrist or~~
18 ~~advanced practice registered nurse with prescriptive authority~~
19 ~~and who holds an accredited national certification in an~~
20 ~~advanced practice registered nurse psychiatric specialization]~~
21 assisted community treatment provider shall make all reasonable
22 efforts to solicit the subject's compliance with the prescribed

S.B. NO. 1322

1 treatment. If the subject fails or refuses to comply after the
2 efforts to solicit compliance, the ~~[treating psychiatrist or~~
3 ~~advanced practice registered nurse with prescriptive authority~~
4 ~~and who holds an accredited national certification in an~~
5 ~~advanced practice registered nurse psychiatric specialization]~~
6 assisted community treatment provider shall assess whether the
7 subject of the order meets criteria for involuntary
8 hospitalization under part IV, subpart C, of this chapter, and
9 proceed with emergency transportation pursuant to section ~~[334-~~
10 ~~59(a)(2) or (3)-]~~ 334-C or 334-D.

11 (e) Notice of any transport or ~~[admission]~~ hospitalization
12 under this section shall be provided pursuant to section ~~[334-~~
13 ~~59.5-]~~ 334-G.

14 (f) Except in cases of willful misconduct, gross
15 negligence, or recklessness, the assisted community treatment
16 provider shall not be held civilly liable, either personally or
17 in the assisted community treatment provider's official
18 capacity, for the death of or injury to the subject of the
19 order, claim for damage to or loss of property, or other civil
20 liability as the result of any act or omission in the course of
21 the employment or duties under this part."

S.B. NO. 1322

SECTION 20. Section 334-130, Hawaii Revised Statutes, is amended to read as follows:

"§334-130 Period of assisted community treatment. (a) [The] Unless a family court orders otherwise, the assisted community treatment order shall continue to apply to the subject, for the duration specified in the order, regardless of whether the treatment setting changes.

(b) The subject of [~~assisted community treatment is~~] the order shall be automatically and fully discharged at the end of the family court ordered period of treatment[~~7~~] pursuant to an assisted community treatment order, a period of no more than two years, unless a new family court order has been obtained [~~as provided hereinbelow~~].

(c) Nothing in this section shall preclude the subject's stipulation to the continuance [~~+~~]of[~~+~~] an existing court order."

SECTION 21. Section 334-131, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the [~~treating psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization~~] assisted community

S.B. NO. 1322

1 treatment provider contemplates discharge for a subject of the
 2 order because of the imminent expiration of the court order or
 3 because the subject of the order is no longer a proper subject
 4 for assisted community treatment, as determined by the criteria
 5 in section 334-121, the [~~treating psychiatrist or advanced~~
 6 ~~practice registered nurse with prescriptive authority and who~~
 7 ~~holds an accredited national certification in an advanced~~
 8 ~~practice registered nurse psychiatric specialization~~] assisted
 9 community treatment provider shall provide notice of intent to
 10 discharge."

11 SECTION 22. Section 334-161, Hawaii Revised Statutes, is
 12 amended by amending subsection (a) to read as follows:

13 "(a) A patient who has been committed to a psychiatric
 14 facility for involuntary hospitalization or who is in the
 15 custody of the director and residing in a psychiatric facility
 16 may be ordered to receive treatment over the patient's
 17 objection, including the taking or application of medication, if
 18 the court, or administrative [~~panel~~] decision-maker through the
 19 administrative authorization process established pursuant to
 20 section 334-162, finds that:

21 (1) The patient suffers from a physical or mental disease,
 22 disorder, or defect;

S.B. NO. 1322

- 1 (2) The patient is imminently dangerous to self or others;
2 (3) The proposed treatment is medically appropriate; and
3 (4) After considering less intrusive alternatives,
4 treatment is necessary to forestall the danger posed
5 by the patient."

6 SECTION 23. Section 334-162, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) A patient who is in the custody of the director and
9 in a psychiatric facility may be ordered to receive medical
10 treatment over the patient's objection through an administrative
11 authorization process that includes the following due process
12 safeguards:

- 13 (1) The facility shall give notice to the patient of the
14 authorization process and the reasons for initiating
15 the process;

- 16 (2) The administrative [~~panel shall consist of three~~
17 ~~members~~] decision-maker who is a psychiatrist with
18 relevant clinical training and experience, and who
19 ~~[are]~~ is not involved with the current treatment of
20 the patient~~[+]~~, shall, after considering all relevant
21 evidence, determine whether the criteria under section
22 334-162 are met;

S.B. NO. 1322

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

(4) The patient shall have the right to appeal the decision of the administrative [~~panel~~] decision-maker."

SECTION 24. Section 334E-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) Access to written rules and regulations with which the patient is expected to comply;

(2) Access to the facility's grievance procedure or to the department of health as provided in section 334-3;

(3) Freedom from reprisal;

(4) Privacy, respect, and personal dignity;

S.B. NO. 1322

- 1 (5) A humane environment;
- 2 (6) Freedom from discriminatory treatment based on race,
- 3 color, creed, national origin, age, and sex;
- 4 (7) A written treatment plan based on the individual
- 5 patient;
- 6 (8) Participation in the planning of the patient's
- 7 treatment plan;
- 8 (9) Refusal of treatment except in emergency situations or
- 9 when a court order or an administrative order pursuant
- 10 to chapter 334, part VIII or X, has been issued;
- 11 (10) Refusal to participate in experimentation;
- 12 (11) The choice of physician if the physician chosen
- 13 agrees;
- 14 (12) A qualified, competent staff;
- 15 (13) A medical examination before initiation of non-
- 16 emergency treatment;
- 17 (14) Confidentiality of the patient's records;
- 18 (15) Access to the patient's records;
- 19 (16) Knowledge of rights withheld or removed by a court or
- 20 by law;
- 21 (17) Physical exercise and recreation;
- 22 (18) Adequate diet;

S.B. NO. 1322

- 1 (19) Knowledge of the names and titles of staff members
- 2 with whom the patient has frequent contact;
- 3 (20) The right to work at the facility and fair
- 4 compensation for work done; provided that work is
- 5 available and is part of the patient's treatment plan;
- 6 (21) Visitation rights, unless the patient poses a danger
- 7 to self or others; provided that where visitation is
- 8 prohibited, the legal guardian or legal representative
- 9 shall be allowed to visit the patient upon request;
- 10 (22) Uncensored communication;
- 11 (23) Notice of and reasons for an impending transfer;
- 12 (24) Freedom from seclusion or restraint, except:
- 13 (A) When necessary to prevent injury to self or
- 14 others;
- 15 (B) When part of the treatment plan; or
- 16 (C) When necessary to preserve the rights of other
- 17 patients or staff;
- 18 (25) Disclosure to a court, at an involuntary civil
- 19 commitment hearing, of all treatment procedures which
- 20 have been administered prior to the hearing; and

S.B. NO. 1322

1 (26) Receipt by the patient and the patient's guardian or
2 legal guardian, if the patient has one, of this
3 enunciation of rights at the time of admission."

4 SECTION 25. Section 586-5.5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) If, after hearing all relevant evidence, the court
7 finds that the respondent has failed to show cause why the order
8 should not be continued and that a protective order is necessary
9 to prevent domestic abuse or a recurrence of abuse, the court
10 may order that a protective order be issued for a further fixed
11 reasonable period as the court deems appropriate, including, in
12 the case where a protective order restrains any party from
13 contacting, threatening, or physically abusing a minor, a fixed
14 reasonable period extending to a date after the minor has
15 reached eighteen years of age.

16 The protective order may include all orders stated in the
17 temporary restraining order and may provide for further relief
18 as the court deems necessary to prevent domestic abuse or a
19 recurrence of abuse, including orders establishing temporary
20 visitation and custody with regard to minor children of the
21 parties and orders to either or both parties to participate in
22 domestic violence intervention services. If the court finds

S.B. NO. 1322

1 that the party meets the requirements under section [334-
2 59(a)(2),] 334-C, the court further may order that the party be
3 taken to the nearest facility for emergency examination and
4 treatment."

5 SECTION 26. Section 334-59, Hawaii Revised Statutes, is
6 repealed:

7 [~~"§334-59 Emergency examination and hospitalization.~~
8 ~~(a) Initiation of proceedings. An emergency admission may be~~
9 ~~initiated as follows:~~

10 ~~(1) If a law enforcement officer has reason to believe~~
11 ~~that a person is imminently dangerous to self or~~
12 ~~others, the officer shall call for assistance from~~
13 ~~a mental health emergency worker designated by the~~
14 ~~director; provided that if a law enforcement officer~~
15 ~~is unable to reach a mental health emergency worker~~
16 ~~telephonically or has reason to believe the situation~~
17 ~~to be unstable to a degree that a delay of greater~~
18 ~~than two minutes would result in serious harm to the~~
19 ~~individual, others, or property, the law enforcement~~
20 ~~officer may act to gain control of the individual.~~
21 ~~Once the law enforcement officer has gained control of~~
22 ~~the individual, the law enforcement officer shall call~~

S.B. NO. 1322

1 ~~for assistance from a mental health emergency worker~~
2 ~~designated by the director; provided that the law~~
3 ~~enforcement officer shall document why the situation~~
4 ~~necessitated that the law enforcement officer gain~~
5 ~~control of the individual. Upon determination by the~~
6 ~~mental health emergency worker that the person is~~
7 ~~imminently dangerous to self or others, the person~~
8 ~~shall be transported by ambulance or other suitable~~
9 ~~means to a licensed psychiatric facility or other~~
10 ~~facility designated by the director for further~~
11 ~~evaluation and possible emergency hospitalization. If~~
12 ~~a crisis intervention officer has probable cause to~~
13 ~~believe that a person is imminently dangerous to self~~
14 ~~or others, the crisis intervention officer shall call~~
15 ~~a mental health emergency worker to determine if the~~
16 ~~person shall be transported by ambulance or other~~
17 ~~suitable means to a behavioral health crisis center~~
18 ~~designated by the director as determined by a mental~~
19 ~~health emergency worker. A law enforcement officer~~
20 ~~may also take into custody and transport to any~~
21 ~~facility designated by the director any person~~
22 ~~threatening or attempting suicide. The law~~

S.B. NO. 1322

1 ~~enforcement officer shall make application for the~~
2 ~~examination, observation, and diagnosis of the person~~
3 ~~in custody. The application shall state or shall be~~
4 ~~accompanied by a statement of the circumstances under~~
5 ~~which the person was taken into custody and the~~
6 ~~reasons therefor, which shall be transmitted with the~~
7 ~~person to a physician, advanced practice registered~~
8 ~~nurse, or psychologist at the facility.~~

9 ~~As used in this paragraph, "crisis intervention~~
10 ~~officer" has the same meaning as defined in section~~
11 ~~353C-1.~~

12 ~~(2) Upon written or oral application of any licensed~~
13 ~~physician, advanced practice registered nurse,~~
14 ~~psychologist, attorney, member of the clergy, health~~
15 ~~or social service professional, or any state or county~~
16 ~~employee in the course of employment, a judge may~~
17 ~~issue an ex parte order orally, but shall reduce the~~
18 ~~order to writing by the close of the next court day~~
19 ~~following the application, stating that there is~~
20 ~~probable cause to believe the person is mentally ill~~
21 ~~or suffering from substance abuse, is imminently~~
22 ~~dangerous to self or others and in need of care or~~

S.B. NO. 1322

1 ~~treatment, or both, giving the findings upon which the~~
2 ~~conclusion is based. The order shall direct that a~~
3 ~~law enforcement officer or other suitable individual~~
4 ~~take the person into custody and deliver the person to~~
5 ~~a designated mental health program, if subject to an~~
6 ~~assisted community treatment order issued pursuant to~~
7 ~~part VIII, or to the nearest facility designated by~~
8 ~~the director for emergency examination and treatment,~~
9 ~~or both. The ex parte order shall be made a part of~~
10 ~~the patient's clinical record. If the application is~~
11 ~~oral, the person making the application shall reduce~~
12 ~~the application to writing and shall submit the same~~
13 ~~by noon of the next court day to the judge who issued~~
14 ~~the oral ex parte order. The written application~~
15 ~~shall be executed subject to the penalties of perjury~~
16 ~~but need not be sworn to before a notary public; or~~

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

21 ~~(A) Mentally ill or suffering from substance abuse;~~

22 ~~(B) Imminently dangerous to self or others; and~~

S.B. NO. 1322

1 ~~(C) In need of care or treatment,~~
2 ~~may direct transportation, by ambulance or other~~
3 ~~suitable means, to a licensed psychiatric facility or~~
4 ~~other facility designated by the director for further~~
5 ~~evaluation and possible emergency hospitalization. A~~
6 ~~licensed physician, an advanced practice registered~~
7 ~~nurse, or a physician assistant may administer~~
8 ~~treatment as is medically necessary, for the person's~~
9 ~~safe transportation. A licensed psychologist may~~
10 ~~administer treatment as is psychologically necessary.~~

11 ~~(b) Emergency examination. A patient who is delivered for~~
12 ~~emergency examination and treatment to a psychiatric facility or~~
13 ~~a behavioral health crisis center shall be provided an~~
14 ~~examination, which shall include a screening to determine~~
15 ~~whether the criteria for involuntary hospitalization listed in~~
16 ~~section 334-60.2 persists, by a licensed physician, medical~~
17 ~~resident under the supervision of a licensed physician, or~~
18 ~~advanced practice registered nurse without unnecessary delay,~~
19 ~~and shall be provided such treatment as is indicated by good~~
20 ~~medical practice. If, after the examination, screening, and~~
21 ~~treatment, the licensed physician, medical resident under the~~
22 ~~supervision of a licensed physician, or advanced practice~~

S.B. NO. 1322

1 ~~registered nurse determines that the involuntary hospitalization~~
2 ~~criteria persist, then a psychiatrist or advanced practice~~
3 ~~registered nurse who has prescriptive authority and who holds an~~
4 ~~accredited national certification in an advanced practice~~
5 ~~registered nurse psychiatric specialization shall further~~
6 ~~examine the patient to diagnose the presence or absence of a~~
7 ~~mental illness or substance use disorder, further assess the~~
8 ~~risk that the patient may be dangerous to self or others, and~~
9 ~~assess whether or not the patient needs to be hospitalized. If~~
10 ~~it is determined that hospitalization is not needed, an~~
11 ~~examination pursuant to section 334 121.5 shall be completed.~~

12 ~~(c) Release from emergency examination. If, after~~
13 ~~examination, the licensed physician, psychiatrist, or advanced~~
14 ~~practice registered nurse with prescriptive authority and who~~
15 ~~holds an accredited national certification in an advanced~~
16 ~~practice registered nurse psychiatric specialization determines~~
17 ~~that the involuntary hospitalization criteria set forth in~~
18 ~~section 334 60.2 are not met or do not persist and the~~
19 ~~examination pursuant to section 334 121.5, where required, has~~
20 ~~been completed, the patient shall be discharged expediently,~~
21 ~~unless the patient is under criminal charges, in which case the~~

S.B. NO. 1322

1 ~~patient shall be returned to the custody of a law enforcement~~
2 ~~officer.~~

3 ~~(d) Emergency hospitalization. If the psychiatrist or~~
4 ~~advanced practice registered nurse with prescriptive authority~~
5 ~~and who holds an accredited national certification in an~~
6 ~~advanced practice registered nurse psychiatric specialization~~
7 ~~who performs the emergency examination has reason to believe~~
8 ~~that the patient is:~~

9 ~~(1) Mentally ill or suffering from substance abuse;~~

10 ~~(2) Imminently dangerous to self or others; and~~

11 ~~(3) In need of care or treatment, or both,~~

12 ~~the psychiatrist or advanced practice registered nurse with~~
13 ~~prescriptive authority and who holds an accredited national~~
14 ~~certification in an advanced practice registered nurse~~
15 ~~psychiatric specialization shall direct that the patient be~~
16 ~~hospitalized on an emergency basis or cause the patient to be~~
17 ~~transferred to another psychiatric facility or other facility~~
18 ~~designated by the director for emergency hospitalization, or~~
19 ~~both. The patient shall have the right immediately upon~~
20 ~~admission to telephone the patient's guardian or a family member~~
21 ~~including a reciprocal beneficiary, or an adult friend and an~~
22 ~~attorney. If the patient declines to exercise that right, the~~

S.B. NO. 1322

~~1 staff of the facility shall inform the adult patient of the
2 right to waive notification to the family, including a
3 reciprocal beneficiary, and shall make reasonable efforts to
4 ensure that the patient's guardian or family, including a
5 reciprocal beneficiary, is notified of the emergency admission
6 but the patient's family, including a reciprocal beneficiary,
7 need not be notified if the patient is an adult and requests
8 that there be no notification. The patient shall be allowed to
9 confer with an attorney in private.~~

~~10 (e) Release from emergency hospitalization. If at any
11 time during the period of emergency hospitalization the treating
12 physician determines that the patient no longer meets the
13 criteria for emergency hospitalization and the examination
14 pursuant to section 334-121.5 has been completed, the physician
15 shall expediently discharge the patient. If the patient is
16 under criminal charges, the patient shall be returned to the
17 custody of a law enforcement officer. In any event, the patient
18 shall be released within forty-eight hours of the patient's
19 admission to a psychiatric facility or other facility designated
20 by the director, unless the patient voluntarily agrees to
21 further hospitalization, or a proceeding for court-ordered
22 evaluation or hospitalization, or both, is initiated as provided~~

S.B. NO. 1322

~~in section 334-60.3. If that time expires on a Saturday,
Sunday, or holiday, the time for initiation is extended to the
close of the next court day. Upon initiation of the
proceedings, the facility shall be authorized to detain the
patient until further order of the court."]~~

SECTION 27. Section 334-59.5, Hawaii Revised Statutes, is
repealed:

~~["§334-59.5] Notice of emergency transportation,
examinations, and hospitalizations. Notice of an individual's
emergency admission, examination, and hospitalization under this
chapter may be given to at least one of the following persons in
the following order of priority: the individual's spouse or
reciprocal beneficiary, legal parents, adult children, legal
guardian, if one has been appointed, or if none can be found,
the closest adult relative, as long as the individual:~~

~~(1) Has capacity to make health care decisions and agrees;~~

~~(2) Is given the opportunity to object and does not~~

~~object, or the health care provider can reasonably~~

~~infer from the circumstances based on the exercise of~~

~~professional judgment that the individual does not~~

~~object; or~~

S.B. NO. 1322

~~(3) Is incapacitated or an emergency circumstance exists
and the health care provider determines based on the
exercise of professional judgment that doing so is in
the best interest of the individual."]~~

SECTION 28. This Act does not affect rights and duties
that matured, penalties that were incurred, and proceedings that
were begun before its effective date.

SECTION 29. If any provision of this Act or the
application thereof to any person or circumstance is held
invalid, the invalidity does not affect other provisions or
applications of the Act that can be given effect without the
invalid provision or application, and to this end the provisions
of this Act are severable.

SECTION 30. In codifying the new sections added by section
2 and referenced in sections 2, 19, and 25 of this Act, the
revisor of statutes shall substitute appropriate section numbers
for the letters used in designating the new sections in this
Act.

SECTION 31. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

S.B. NO. 1322

1 SECTION 32. This Act shall take effect upon its approval.

2

3

INTRODUCED BY:

A handwritten signature in dark ink, appearing to be 'Ruth H. Hall', is written over a horizontal line.

4

BY REQUEST

S.B. NO. 1322

Report Title:

Mental Health; Admission to Psychiatric Facility; Emergency Transportation; Emergency Examination; Emergency Hospitalization; Involuntary Hospitalization; Assisted Community Treatment; Administration of Treatment Over the Patient's Objection; Limited Liability; Confidentiality

Description:

Clarifies and expands the circumstances and procedures available for emergency transportation, examination, and hospitalization under chapter 334. Provides limits on liability for state and local governments and professionals during mental health emergency procedures while performing their duties in the course of employment. Expands the notice requirements for an emergency hospitalization to include an individual's health-care surrogate and clarifies when notice to family members can be waived. Removes the authority of the family court to appoint a legal guardian in a proceeding for involuntary hospitalization. Removes the requirement that psychiatric facilities wait for a response on a notice of intent to discharge an involuntary hospitalization patient prior to discharge. Clarifies the circumstances under which a subject of an order for assisted community treatment can be administered medication over the subject's objection. Provides limits on liability for an assisted community treatment provider. Modifies the administrative authorization of medical treatment over the patient's objection to be reviewed by a single decision-maker who is a psychiatrist.

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

JUSTIFICATION SHEET

SB. NO. 1322

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO MENTAL HEALTH.

PURPOSE: To clarify, update, and revise Hawaii's mental health laws by:

- (1) Clarifying the procedures and expanding on the circumstances available from initial contact with an individual suffering from mental illness or substance abuse to emergency transportation, examination, and hospitalization of the individual;
- (2) Establishing liability limits for state and local governments and health care professionals under certain circumstances arising from emergency procedures;
- (3) Expanding the notice requirements when an emergency hospitalization occurs to include an individual's healthcare surrogate, as well as clarifying when the individual can waive notice to the individual's family members;
- (4) Removing the authority of the family court to appoint a legal guardian or conservator in a proceeding for involuntary hospitalization, thereby leaving appointments for legal guardians or conservators subject to the requirements of chapter 560, article V, Hawaii Revised Statutes (HRS);
- (5) Removing the requirement that psychiatric facilities wait for responses from interested parties to a notice of intent to discharge a patient under involuntary hospitalization prior to discharging the patient;
- (6) Clarifying the circumstances under which a subject of an order for assisted community treatment can be administered medication over the subject's objection;

SB. NO. 1322

- (7) Providing limits on liability for an assisted community treatment provider; and
- (8) Modifying the requirements to obtain administrative authorization of medical treatment over the objection of a patient who is in the custody of the director and in a psychiatric facility, so that the treatment can be authorized by a single decision-maker who is a psychiatrist.

MEANS:

Add a new subpart to part IV and a new section to part VIII of chapter 334, HRS; form subparts out of part IV of chapter 334, HRS. Amend sections 334-1, 334-60.2, 334-60.3, 334-60.4, 334-60.5, 334-60.7, 334-76, 334-121, 334-122, 334-123(c) and (d), 334-124, 334-125(a) and (c), 334-126(g), 334-127, 334-129, 334-130, 334-131(a), 334-161(a), 334-162(a), 334E-2(a), and 586-5.5(a), HRS. Repeal sections 334-59 and 334-59.5, HRS.

JUSTIFICATION:

The Department was tasked with revising Hawaii's mental health laws to provide greater clarity for stakeholders and the public, as well as updating legal mechanisms to better help individuals suffering from mental illness or substance abuse. Improvements in these laws combined with medical advancements for mental health treatment and care are needed to optimize the State's ability to ensure the welfare of all its citizens.

Impact on the public: The bill will improve public welfare and safety and clarify available interventions for individuals suffering from mental illness or substance abuse.

Impact on the department and other agencies: The bill aims to enable the Department of Health to direct its resources towards the areas of greatest need and prioritize

SB. NO. 1322

providing better care to more patients in need.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary; Department of Health; County Law
Enforcement Agencies; County Emergency
Medical Services.

EFFECTIVE DATE: Upon approval.