

ACT 58

S.B. NO. 2041

A Bill for an Act Relating to Admission to Psychiatric Facility.

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

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

“§334-59 Emergency examination and hospitalization. (a) Initiation of proceedings. An emergency admission may be initiated as follows:

- (1) If a police [[]officer[]] has reason to believe that a person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the officer shall call for assistance from the mental health emergency workers designated by the director. Upon determination by the mental health emergency workers that the person is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, the person shall be transported by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization. A police officer may also take into custody and transport to any facility designated by the director any person threatening or attempting suicide. The [[]officer[]] shall make application for the examination, observation, and diagnosis of the person in custody. The application shall state or shall be accompanied by a statement of the circumstances under which the person was taken into custody and the reasons therefor which shall be transmitted with the person to [some] a physician or psychologist at the facility.
- (2) Upon written or oral application of any licensed physician, 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 an ex parte order orally, but shall reduce the order to writing by the close of the next court day following the application, stating that there is probable cause to believe [a] the person is mentally ill or suffering from substance abuse, is imminently dangerous to self or others, or is gravely disabled, or is obviously ill, and in need of care [and/or] or treatment, or both, giving the findings on which the conclusion is based, and directing that a police [[]officer[]] or other suitable individual take the person [[]into[]] custody and deliver the person to the nearest facility designated by the director for emergency examination and treatment. The ex parte order shall be made a part of the patient’s clinical record. If the application is oral, the person making the application shall

reduce the application to writing and shall submit the same by noon of the next court day to the judge who issued the oral ex parte order. The written application shall be executed subject to the penalties of perjury but need not be sworn to before a notary public.

- (3) Any licensed physician or psychologist who has examined a person and has reason to believe the person is:

(A) [mentally] Mentally ill or suffering from substance abuse[, and];¹

(B) [is imminently] Imminently dangerous to self or others, or is gravely disabled, or is obviously ill[,]; and

(C) [is in] In need of care [and/or] or treatment[,];

may direct transportation, by ambulance or other suitable means, to a licensed psychiatric facility for further evaluation and possible emergency hospitalization [and]. A licensed physician may administer such treatment as is medically necessary,¹ for the person's safe transportation. A licensed psychologist may administer such treatment as is psychologically necessary.

(b) Emergency examination. A patient who is delivered for emergency examination and treatment to a facility designated by the director shall be examined by a licensed physician without unnecessary delay, and may be given such treatment as is indicated by good medical practice. A psychiatrist or psychologist may further examine the patient to diagnose the presence or absence of a mental disorder, assess the risk that the patient may be dangerous to self or others, or is gravely disabled, or is obviously ill, and assess whether or not the patient needs to be hospitalized.

(c) Release from emergency examination. If the physician who performs the emergency examination, in consultation with a psychologist if applicable, concludes that the patient need not be hospitalized, the patient shall be discharged immediately unless the patient is under criminal charges, in which case [he] the patient shall be returned to the custody of a law enforcement officer.

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

(1) [mentally] Mentally ill or suffering from substance abuse[, and];

(2) [is imminently] Imminently dangerous to self or others, or is gravely disabled, or is obviously ill[,]; and²

(3) [is in] In need of care [and/or] or treatment, or both;

the physician or the psychologist may [hospitalize] direct that the patient be hospitalized on an emergency basis [and/or] or cause the patient to be transferred to another psychiatric facility for emergency hospitalization[,], or both. The patient shall have the right immediately upon admission to telephone the patient's guardian or a family member or an adult friend and an attorney. If the patient declines to exercise that right, the staff of the facility shall inform [an] the adult patient of the right to waive notification to the family and shall make reasonable efforts to ensure that the patient's guardian or family is notified of the emergency admission but the patient's family need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with an attorney in private.

(e) Release from emergency hospitalization. If at any time during the period of emergency hospitalization the responsible physician concludes that the patient no longer meets the criteria for emergency hospitalization the physician shall discharge the patient. If the patient is under criminal charges, the patient shall be returned to the custody of a law enforcement officer. In any event, the patient must be released within forty-eight hours of the patient's admission,

unless the patient voluntarily agrees to further hospitalization, or a proceeding for court-ordered evaluation or hospitalization, or both, is initiated as provided 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 2. Section 334-60.3, Hawaii Revised Statutes, is amended to read as follows:

"[§334-60.3] Initiation of proceeding for involuntary hospitalization. (a) Any person may file a petition alleging that a person located in the county meets the criteria for commitment to a psychiatric facility. The petition shall be executed subject to the penalties of perjury but need not be sworn to before a notary public. The attorney general, the attorney general's deputy, special deputy, or appointee designated to present the case shall assist the petitioner to state the substance of the petition in plain and simple language. The petition may be accompanied by a certificate of [a] the licensed physician or psychologist who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to medical or psychological examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the signs and symptoms relied upon by the physician or psychologist to determine the person is in need of care or treatment, or both, and whether or not the person is capable of realizing and making a rational decision with respect to the person's need for treatment. If the petitioner believes that further evaluation is necessary before commitment, the petitioner may request such further evaluation.

(b) In the event the subject of the petition has been given an examination, evaluation, or treatment in a psychiatric facility within five days before submission of the petition, and hospitalization is recommended by the staff of the facility, the petition may be accompanied by the administrator's certificate in lieu of a physician's or psychologist's certificate."

SECTION 3. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsections (g), (h), and (i) to read as follows:

"(g) No individual may be found to require [medical] treatment in a psychiatric facility unless at least one physician or psychologist who has personally examined the individual testifies in person at the hearing. This testimony may be waived by the subject of the petition. If the subject of the petition has refused to be examined by a licensed physician[, or psychologist], the subject may be examined by a court-appointed licensed physician[. or psychologist]. If the subject refuses and there is sufficient evidence to believe that the allegations of the petition are true, the court may make a temporary order committing the subject to a psychiatric facility for a period of not more than five days for the purpose of a diagnostic examination and evaluation. The subject's refusal shall be treated as a denial that the subject is mentally ill or suffering from substance abuse. Nothing [herein,] in this section, however, shall limit the individual's privilege against self-incrimination.

(h) The subject of the petition in a hearing under this section has the right to secure an independent medical or psychological evaluation and present evidence thereon.

(i) If after hearing all relevant evidence, including the result of any diagnostic examination ordered by the court, the court finds that an individual is not a person requiring medical, psychiatric, psychological, or other rehabilitative treatment or supervision, the court shall order that the individual be discharged if the individual has been hospitalized prior to the hearing. 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 334-60.2(2) and 334-60.2(3) have been met by clear and convincing evidence, the court may issue an order to any police officer to deliver the subject 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. 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 notice of intent to discharge, transfer, or recommit."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 6, 1994.)

Notes

1. Should be underscored.
2. "And" should not be underscored.